FEDERAL REGISTER

VOLUME 24 NUMBER 87

Washington, Tuesday, May 5, 1959

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Interstate Commerce Commission

Effective upon publication in the FEDERAL REGISTER, § 6.117(a) is added as set out below.

§ 6.117 Interstate Commerce Commission.

(a) One Congressional Liaison Officer.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F.R. Doc. 59-3830; Filed, May 4, 1959; 8:51 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter I—Farm Credit Administration

SUBCHAPTER B—FEDERAL FARM LOAN SYSTEM

PART 10—FEDERAL LAND BANKS GENERALLY

Interest Rates on Loans Made Through Associations

The interest rate on loans made through national farm loan associations has been increased from 5 to 5½ percent per annum: by the Federal Land Bank of Omaha on applications taken after April 22, 1959; by the Federal Land Bank of Wichita on applications taken on and after April 27, 1959; by the Federal Land Bank of Louisville on applications filed with an association on or after May 1, 1959; and by the Federal Land Bank of New Orleans on applications received on and after May 4, 1959. In order to reflect such changes, § 10.41 of Title 6 of the Code of Federal Regulations, as amended (23 F.R. 2137, 5029, 6976, 8651; 24 F.R. 845, 2267, 3181), is amended by substituting "5½" for "5" in the lines with "Omaha", "Wichita", "Louisville" and "New Orleans" therein.

(Sec. 6, 47 Stat. 14, as amended; 12 U.S.C. 665. Interprets or applies secs. 12 "Second", 17(b), 39 Stat. 370, 375, as amended; 12 U.S.C. 771 "Second", 831(b))

R. B. TOOTELL,
Governor,
Farm Credit Administration.

[F.R. Doc. 59-3775; Filed, May 4, 1959; 8:48 a.m.]

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 438—NAVAL STORES

Subpart—1959 Gum Naval Stores Price Support Loan Program

Statement with respect to the Gum Naval Stores Price Support Loan Program for the calendar year 1959, formulated by the Commodity Credit Corporation and the Commodity Stabilization Service (hereinafter referred to as "CCC" and "CSS").

Sec.
438.1001 Administration.
438.1002 Eligible producer.
438.1003 Eligible naval stores.
438.1004 Eligible turpentine.
438.1005 Eligible rosin.
438.1006 Eligible oleoresin.
438.1007 Eligible metal drums.
438.1008 Availability of loans.
438.1009 Rate of loan to producers.
438.1010 Storage provisions.
438.1011 Maturity.
438.1012 Redemption.
438.1013 Rights of CCC upon maturity.
438.1014 Disposition of proceeds upon liquidation.
438.1015 Personal liability.

AUTHORITY: §§ 438.1001 to 438.1015 issued under sec. 4(d), 62 Stat. 1070, 15 U.S.C. 714b. Interprets or applies sec. 5(a), 62 Stat. 1072, 15 U.S.C. 714c; sec. 301, 63 Stat. 1053, 7 U.S.C. 1447.

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FEDERAL REGISTER

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

A Cumulative Codification Guide covering the current month appears at the end of each issue beginning with the second issue of the month.

CODIFICATION GUIDE—Con.

§ 438.1001 Administration.

The Naval Stores Branch, Tobacco Division, CSS, will supervise the administration of the program. CCC will make a loan to the American Turpentine Farmers Association Cooperative, Valdosta, Georgia (hereinafter referred to as the "Association"), under a Loan Agreement which will enable the Association in turn to make loans to eligible producers on eligible naval stores, to store or supervise the storage of the collateral, to perform related field administration functions, to arrange for redemptions, and to collaborate in the liquidation of unredeemed collateral. The CSS Commodity Office, Dallas, Texas, will perform accounting and auditing functions.

§ 438.1002 Eligible producer.

A producer will be eligible for loans if he (a) is a member of the Association under membership requirements approved by CCC (no producer who is otherwise eligible may be excluded from membership in the Association), (b) is a cooperator in the 1959 Naval Stores Conservation Program of the United States Department of Agriculture or otherwise follows one or more good forestry conservation practices established by State and Federal forestry services, as determined by the Association, (c) has made satisfactory arrangements to pay any indebtedness to the United States Department of Agriculture or any agency thereof, as evidenced by the registers of indebtedness maintained by the Agricultural Stabilization and Conservation county committees of the United States Department of Agriculture, and (d) has executed, and has not breached his obligations under, the Producer's Marketing Agreement (ATFA Form 1–1959), or any other similar agreement.

§ 438.1003 Eligible naval stores.

"Eligible naval stores" are eligible turpentine, eligible rosin and the turpentine and rosin content in eligible oleoresin.

§ 438.1004 Eligible turpentine.

"Eligible turpentine" is gum turpentine which (a) was produced from eligible oleoresin, (b) is free and clear from all liens and encumbrances, (c) has not been theretofore pledged for a loan under this or any similar program and in which the beneficial interest is and always has been in the producer, (d) is "waterwhite" in color, (e) is free from excess resin acids, as evidenced by a total acid number of not more than 0.50, and (f) conforms as to specific gravity to Federal Specifications TT–T–801a, to wit: a maximum of 0.875 and a minimum of 0.860 taken at 60 degrees over 60 degrees Fahrenheit.

§ 438.1005 Eligible rosin.

"Eligible rosin" is gum rosin which (a) was produced from eligible oleoresin, (b) grades "K" or better, (c) is free and clear from all liens and encumbrances, (d) has not been theretofore pledged for a loan under this or any similar program and in which the beneficial interest is and always has been in the producer, (e) is packed to the net weight approved by CCC, in eligible metal drums, (f) is transparent, (g) is free from visible foreign materials and contains no extraneous matter resulting from chemical or other treatment of the rosin, or of the oleoresin or the trees from which it came, and (h) conforms as to softening point to not less than Federal Specifications LLL–R–626b, to wit: 158 degrees Fahrenheit (American Society for Testing Materials Methods No. E–28–51T). Rosin must be federally inspected and weighed or the weights checked prior to tender for loan.

§ 438.1006 Eligible oleoresin.

"Eligible oleoresin" is oleoresin (a) which was produced in 1959 in the United States by an eligible producer, (b) which is free and clear from all liens and encumbrances, (c) the turpentine or rosin content in which has not been theretofore pledged for a loan under this or any similar program and in which the beneficial interest is and always has been in the producer, and (d) which will yield turpentine of the prescribed quality, and rosin of the prescribed grades and quality. When a producer's eligible oleoresin was commingled with oleresin produced by other producers in the processing operation, the turpentine and rosin tendered for loan by the producer as representing the processed equivalent of his eligible oleoresin will be deemed to be, if otherwise eligible, eligible turpentine and eligible rosin produced by such producer.

§ 438.1007 Eligible metal drums.

"Eligible metal drums" are drums conforming to the specifications for metal drums approved by CCC, obtainable from and on file in the office of the Association.

§ 438.1008 Availability of loans.

(a) Under the Loan Agreement, CCC will make a loan to the Association for the purpose of enabling the Association to make loans available, or to make loans, to eligible producers of eligible naval stores produced in 1959. The loan to the Association will be in an amount equal to (1) the amount of the loans made by the Association to producers, (2) the administrative and operating expenses, approved by CCC, incurred by the Association in connection with making loans available and the making of loans, and the handling, preservation and sale of pledged naval stores, (3) the storage charges after naval stores are pledged, and (4) an indemnification charge to cover the assumption by CCC of the risk of loss on rosin and rosin content in oleoresin (the storage rate for turpentine includes insurance).

(b) Each producer desiring to obtain loans will execute a Producer's Marketing Agreement with the Association. Each loan will be secured by a pledge by the producer to the Association of eligible turpentine, eligible rosin, or unprocessed turpentine or rosin content in eligible oleoresin, and the Association, in turn, will pledge the same to CCC as security for the loan made by CCC to the Association. Loans on rosin will be made only on full drums thereof, and loans on the rosin content in oleoresin, only upon the equivalent of full drums thereof. No loans will be made on any naval stores offered later than December 31, 1959.

(c) Eligible naval stores will be deemed tendered for loan by the producer to the Association only when such naval stores have been (1) processed (except where unprocessed turpentine or rosin content in oleoresin is offered for loan), (2) placed in storage in the custody of an approved warehouseman who has entered into and is fully complying with a Warehouse Agreement (ATFA Form 2–1959), or in the custody of the Association acting under a Storage Agreement with Commodity, and (3) offered for loan on a Producer's Offer (ATFA Form 3A–1959) (the date of which, unless a first offer and dated not later than April 30, 1959, shall be not later than thirty (30) days from the date of delivery of eligible oleoresin for processing). If there are any liens or encumbrances on the naval stores offered for loan, proper waivers are required on

a Lienholders' Waiver and Agreement (ATFA Form 3–1959).

§ 438.1009 Rate of loan to producers.

The association will make loans to producers based on the rate of $28.98 per standard barrel (435 pounds net weight each) of crude pine gum, processed basis. This support level will maintain the same loan rates for turpentine and the average, WG, grade of rosin as were in effect for the 1958 program. These rates are fifty cents ($0.50) per 7.2 pound gallon of gum turpentine in bulk, and $7.97 per 100 pounds of WG grade gum rosin. Loan rates will be 15 cents higher for rosin grades X and WW and 25 cents lower for grades N, M, and K. The amount which the Association will lend to any producer will be determined by applying the applicable loan rates in effect for turpentine and rosin on the date of the applicable Producer's Offer to the quantities thereof tendered for loan.

§ 438.1010 Storage provisions.

The producer will be required to place naval stores offered for loan in storage in the custody of an approved warehouseman who has entered into and is fully complying with a Warehouse Agreement with the Association (this Agreement will be assigned by the Association to CCC), or in the custody of the Association acting under a Storage Agreement with CCC. All processing charges, including the cost of the eligible metal drums for rosin, and all storage and other warehouse charges to the date of tender for loan will be borne by the producer. Storage charges accruing after the naval stores are pledged are payable by CCC, and comprise part of the loan by CCC to the Association.

§ 438.1011 Maturity.

The loan made by CCC to the Association and the loans made by the Association to producers will be due and payable upon demand, or on July 1, 1960, whichever is earlier.

§ 438.1012 Redemption.

(a) Subject to terms and conditions of the Producer's Marketing Agreement, the producer may redeem pledged naval stores, prior to maturity of the loan, upon application to the Association and payment of the redemption price. The producer's right to redeem may be exercised for him and in his behalf by the Association and the producer's exercise of the right of redemption is subject to the prior exercise thereof by the Association. Subject to the terms and conditions of the Loan Agreement, the Association may redeem naval stores pledged by the Association to CCC, upon application to CCC therefor prior to the maturity of the loan and upon payment of the redemption price.

(b) The redemption price shall be determined by CCC and shall be the amount outstanding under the Loan Agreement, including any unpaid accrued expenses and charges, plus interest at the rate of three and one-half percent (3½%) per annum, applied to the gallons of turpentine, pounds of rosin, or the content thereof in oleoresin, respectively, to be redeemed. Any naval stores redeemed shall not be thereafter eligible for loan.

§ 438.1013 Right of CCC upon maturity.

Upon maturity of the loan, CCC will take title to any unredeemed naval stores, without a sale thereof, and CCC shall have no obligation to pay or account to the Association or the producer for any market value which such naval stores may have in excess of the amount of the loan, plus interest and charges.

§ 438.1014 Disposition of proceeds upon liquidation.

CCC will apply the net proceeds from the disposition of naval stores pledged prior to January 1, 1959 (a) towards satisfaction of the accrued interest on loans made by CCC to the Association under the current and any prior similar program, (b) towards satisfaction of the principal amount of such loans, and (c) towards satisfaction of any other indebtedness of the Association to CCC. In the event that any such sum remains after application of these amounts, such sum will be returned to the Association by CCC for distribution by the Association to its producer-member loan participants, or for and in behalf of its producer-members, on an equitable basis as determined by the Association.

§ 438.1015 Personal liability.

The loans will be nonrecourse, except that any fraudulent representation by the producer or the Association in the loan documents, or in obtaining a loan, will render him or it subject to criminal prosecution under applicable law, and personally liable for the amount by which the proceeds received upon the disposition of the pledged naval stores are less than the amount of indebtedness incurred by the Association with respect thereto.

Issued this 29th day of April 1959.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 59-3769; Filed, May 4, 1959; 8:47 a.m.]

[1959 CCC Cottonseed Bulletin 1]

PART 443—OILSEEDS

Subpart—1959 Cottonseed Loan Program Regulations

This bulletin states the requirements with respect to loans under the 1959 Cottonseed Price Support Program formulated by Commodity Credit Corporation (hereinafter referred to as "CCC") and the Commodity Stabilization Service (hereinafter referred to as "CSS"). A separate bulletin (or bulletins) will cover purchases of cottonseed under the 1959 Cottonseed Price Support Program. The program will be carried out by CSS under the general supervision and direction of the Executive Vice President, CCC.

Sec.

AUTHORITY: §§ 443.1501 to 443.1520 issued under sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 301, 401, 63 Stat. 1053, 1054, as amended; sec. 203, 70 Stat. 212; 15 U.S.C. 714c, 7 U.S.C. 1447, 1421, 1446d.

§ 443.1501 Administration.

In the field, the programs will be administered through Agricultural Stabilization and Conservation (hereinafter referred to as "ASC") State and county committees (hereinafter referred to as "State" and "county" committees) and the CSS Commodity Office located at Wirth Building, 120 Marais Street, New Orleans 16, Louisiana, (hereinafter referred to as "the New Orleans office"). Forms will be distributed through the offices of State and county committees. County committees will determine or cause to be determined the quantity and grade of cottonseed, the amount of the loan, and the value of the cottonseed delivered under the loan. Loan documents will be completed in the county ASC office, and copies of such documents will be retained there. All documents will be approved by the county office manager or other employee of the county office designated by him to act in his behalf. Such designation shall be on file in the county office. County office managers, State and county committees, and the New Orleans office do not have authority to modify or waive any of the provisions of this subpart or any amendments thereto.

§ 443.1502 Availability of loans.

(a) *Area.* Farm-storage loans (hereinafter referred to as "loans") shall be available on eligible cottonseed stored in approved storage in all cotton-producing areas, except that loans will not be made in any area where the appropriate State committee determines that the damage hazard to farm-stored cottonseed would not warrant the making of loans.

(b) *Time.* Loans shall be available through January 31, 1960. Notes and chattel mortgages must be signed by the producer and delivered or mailed to the county office on or before such date.

(c) *Source.* Loans will be made available through the offices of county committees. Disbursements on loans will be made to producers by ASC county offices by means of sight drafts drawn on CCC in accordance with instructions issued by CSS to the State and county committees. Disbursements on loans will be

made not later than February 15, 1960, except where specifically approved by the New Orleans office in each instance. The producer shall not present the loan documents for disbursement unless the cottonseed are in existence and in good condition. If the cottonseed are not in existence and in good condition at the time of disbursement, the proceeds shall be promptly refunded by the producer.

§ 443.1503 Eligible producer.

(a) An eligible producer shall be any individual, partnership, corporation, association, trust, estate, or other legal entity, or a State or political subdivision thereof, or an agency of such State or political subdivision, producing cottonseed in 1959 in the capacity of landowner, landlord, tenant, or sharecropper.

(b) Eligible producers who are members of cooperative marketing associations may act collectively through their associations in obtaining loans in accordance with the provisions of § 443.1520.

§ 443.1504 Eligible cottonseed.

Eligible cottonseed shall be cottonseed that meet the following requirements:

(a) The cottonseed must have been produced in the United States in 1959 by an eligible producer.

(b) Such cottonseed must have been produced by the person tendering them for a loan, or by the person who delivered the cottonseed to the cooperative association tendering the cottonseed for a loan, and the beneficial interest in the cottonseed must be in such person and must always have been in him or in him and a former producer whom he succeeded before the cottonseed were harvested. Cottonseed tendered by a cooperative association for a loan must have been produced and delivered to the association by its producer-members. Any person tendering cottonseed for a loan must have the legal right to mortgage the cottonseed as security for the loan.

(c) Cottonseed must be sound and clean and must not contain more than 11 percent moisture.

(d) No warehouse receipts shall be outstanding on the cottonseed.

§ 443.1505 Approved storage.

Approved storage shall consist of storage structures located on or off the farm which, as determined by the county office manager, are of such construction as to afford safe storage of cottonseed and afford protection against weather damage, poultry, livestock, and rodents, and reasonable protection against fire and theft.

§ 443.1506 Approved forms.

(a) The documents named in this section, together with the provisions of this subpart and any supplements or amendments thereto, govern the rights and responsibilities of the producers under this program. Loan documents executed by an administrator, executor, or trustee will be acceptable only where valid in law and must be accompanied by documentary evidence of the authority of the person executing such documents. Documents must have State and documentary revenue stamps affixed when required by law.

(b) The following documents must be delivered by the producer in support of every loan: Producer's Note and Supplemental Loan Agreement (Commodity Loan Form A) and Commodity Chattel Mortgage (Commodity Loan Form AA) covering the cottonseed tendered as security for the loan, both executed and delivered within the period prescribed in § 443.1502, and such other forms as may be prescribed by CCC.

§ 443.1507 Determination of quantity.

The quantity of cottonseed at the time a loan is made shall be determined by actual weight or by an estimate based upon measurements. When the weight of cottonseed to be placed under loan is estimated by measurement, 90 cubic feet of cottonseed shall be considered the equivalent of one ton. The quantity delivered in liquidation of the loan shall be the net weight, which shall be the gross weight of the cottonseed less a deduction for any foreign matter in excess of one percent of the gross weight.

§ 443.1508 Liens.

The cottonseed must be free and clear of all liens and encumbrances including any claim the ginner may have against the cottonseed for his regular ginning charge. If liens, ginner's claims, or encumbrances exist on the cottonseed, proper waivers must be obtained.

§ 443.1509 Service charges.

The producer shall pay a service charge of 35 cents per ton on the number of tons placed under a loan, or $3.00, whichever is greater. State committees are authorized to require prepayment of $3.00 of the service charges. No refund of any service charge will be made.

§ 443.1510 Setoffs.

(a) If any installment or installments on any loan made available by CCC on farm-storage facilities or mobile drying equipment are payable, under the provisions of the note evidencing such loan, out of any amount due the producer under the program provided for in this subpart, the producer must designate CCC or the lending agency holding such note as payee of such amount to the extent of such installments, but not to exceed that portion of the amount remaining after deduction of service charges and amounts due prior lienholders.

(b) If the producer is indebted to CCC, or if the producer is indebted to any other agency of the United States, and such indebtedness is listed on the county debt record, amounts due the producer under the program provided for in this subpart after deduction of amounts payable on farm-storage facilities or mobile drying equipment and other amounts provided in paragraph (a) of this section, shall be applied, as provided in the Secretary's Setoff Regulations, 7 CFR Part 13 (23 F.R. 3757), to such indebtedness.

(c) Compliance with the provisions of this section shall not deprive the producer of any right he might otherwise have to contest the justness of the indebtedness involved in the setoff action either by administrative appeal or by legal action.

§ 443.1511 Interest rate.

Loans will bear interest from the date of disbursement to the date of repayment at the rate announced in a separate notice published in the FEDERAL REGISTER. Loans in default or obtained through fraud will bear interest at the rate of 6 percent per annum from the date of default or the date of disbursement, respectively.

§ 443.1512 Transfer of producer's equity.

The right of the producer to transfer either his right to redeem the cottonseed under loan or his remaining interest may be restricted by CCC.

§ 443.1513 Safeguarding of the cottonseed.

The producer who places cottonseed under a loan is obligated to maintain the storage structure in good repair, and to keep the cottonseed in good condition.

§ 443.1514 Insurance.

CCC will not require the producer to insure the cottonseed placed under a loan. However, if the producer does insure such cottonseed and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the cottonseed involved in the loss.

§ 443.1515 Loss or damage to the cottonseed.

The producer shall be responsible for the quality and for any loss in quantity of the cottonseed placed under loan, except that, subject to the provisions of § 443.1514, any physical loss or damage other than shrinkage or natural deterioration occurring after disbursement of the loan funds to the producer, without fault, negligence, or conversion on the part of the producer or any other person having control of the storage structure, and resulting solely from an external cause other than insect infestation or vermin will be assumed by CCC to the extent of the loan plus interest, provided the producer or other person having control of the storage structure has given the county office immediate written notice of such loss or damage, and provided there has been no fraudulent representation made by the producer in the loan documents or in obtaining the loan. No physical loss or damage occurring prior to disbursement of the loan funds to the producer will be assumed by CCC. The date of the draft shall constitute the date of disbursement of the funds.

§ 443.1516 Personal liability.

The making of any fraudulent representations by the producer in the loan documents or in obtaining the loan, or the conversion or unlawful disposition by him of any portion of the cottonseed under loan, shall render the producer subject to criminal prosecution under Federal law and render him personally liable for the amount of the loan and

for any resulting expense incurred by CCC.

§ 443.1517 Maturity and liquidation of loans.

(a) Settlement of loans and delivery of the cottonseed covered by chattel mortgage shall be made in accordance with this section. All loans mature on demand but not later than March 1, 1960. If the producer does not repay his loan on or before maturity, the producer shall deliver the mortgaged cottonseed in accordance with instructions issued on behalf of the county committee. The producer may, however, pay off his loan and redeem his cottonseed at any time prior to the delivery of the cottonseed to CCC or removal of the cottonseed by CCC. In the event the farm is sold, or there is a change of tenancy, the cottonseed may be delivered by the producer before the maturity date of the loan, after obtaining delivery instructions issued on behalf of the county committee, or may be delivered before the maturity date of the loan for other reasons upon prior approval of the Executive Vice President, CCC. After a complete grade determination by a cottonseed chemist licensed by the U.S. Department of Agriculture, credit will be given at the applicable settlement rate, according to grade and/or quality (see § 443.1519), for the total quantity delivered, provided it is the identical cottonseed on which the loan was made.

(b) If the producer is directed to deliver his cottonseed to a point other than the normal delivery point, the producer shall be allowed compensation (as determined by CCC) for the additional cost of hauling the cottonseed any distance greater than the distance from the point where the cottonseed are stored by the producer to the normal delivery point.

(c) If the settlement value of the cottonseed delivered under a loan exceeds the amount due on the loan by more than $3.00, such amount will be paid to the producer on the basis of the settlement documents. To avoid administrative costs of making small payments, if the amount found due the producer in such settlement is $3.00 or less, such amount will be paid only upon his request. Payments will be made by sight drafts drawn on CCC by the county office.

(d) If the settlement value of the cottonseed is less than the amount due on the loan (excluding interest), the amount of the deficiency, plus interest, shall be paid to CCC by the producer and may be set off against any payment which would otherwise be due to the producer under any agricultural programs administered by the Secretary of Agriculture or any other payments which are due or may become due to the producer from CCC or any other agency of the United States: *Provided,* That, to avoid administrative costs of handling small accounts, a deficiency of $3.00 or less, including interest, may be disregarded unless demand therefor is made by CCC upon the producer.

(e) If the loan is not liquidated upon maturity by payment or delivery, CCC may remove the cottonseed and sell them in accordance with the provisions of the chattel mortgage (Commodity Loan Form AA).

§ 443.1518 Release of the cottonseed under loan.

A producer may at any time obtain the release of cottonseed remaining under loan by paying to CCC the principal amount thereof, plus accrued interest, and any charges that may be due. Upon payment of a loan, the county office should be requested to release the mortgage by filing an instrument of release or by executing a marginal release on the county records. Partial release of the cottonseed prior to maturity of the loan may be arranged with the county committee by paying to CCC the amount of the loan, plus charges and accrued interest, represented by the quantity of the cottonseed to be released: *Provided, however,* No partial release of cottonseed shall include less than the total quantity of cottonseed stored in any single commingled mass unless the appropriate county committee determines that release of a portion of such commingled mass may be made.

§ 443.1519 Loan and settlement rates.

(a) *Loan rates.* Loans on cottonseed shall be made at the rate of $38.00 per ton of eligible cottonseed as defined in § 443.1504.

(b) *Basic settlement rate.* The basic settlement rate for basis grade (100) cottonseed shall be $38.00 per net ton f.o.b. railroad cars or trucks at delivery points designated by CCC. The settlement rate for cottonseed grading above or below basis grade (100) shall be $38.00 per ton plus or minus a percentage of such price equal to the percentage by which the grade of such cottonseed is above or below 100. In the case of "off-quality" or "below grade" cottonseed, as defined in the United States Official Standards for Grades of Cottonseed, CCC will sell such cottonseed pursuant to the provisions of the chattel mortgage at the current market price, and the settlement rate shall be the market price per ton determined on the basis of such sale.

§ 443.1520 Cooperative marketing associations.

(a) Cooperative marketing associations shall be eligible for loans: *Provided,* That (1) the cottonseed placed under loan are delivered to the association by eligible producers who are members of the association; (2) the association has been granted by such producer-members the legal right to mortgage the cottonseed as security for a loan; (3) the association keeps any cottonseed covered by a chattel mortgage segregated from all cottonseed not covered by the mortgage; and (4) the association undertakes to pay CCC any amounts due it under the provisions of this program at the time of settlement.

(b) Cooperative associations desiring loans may obtain documents from the county office for the county in which the association is located. The loan and settlement rates to cooperative associations will be the same as those to individual producers, and loans with respect to such associations will otherwise be on substantially the same basis as loans with respect to individual producers.

Issued this 29th day of April 1959.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 59-3770; Filed, May 4, 1959; 8:47 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 911—MILK IN TEXAS PANHANDLE MARKETING AREA

Determination of Equivalent Price for Class II Milk During Months of March Through June

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and to the applicable provisions of the order, as amended, regulating the handling of milk in the Texas Panhandle marketing area (7 CFR Part 911), hereinafter referred to as the "order", it is hereby found and determined as follows:

(1) Inasmuch as two of the four milk plants specified in § 911.51(b)(1) of the order and whose paying prices are used as the basis for determining the price of Class II milk during the period, March through June, and as an alternative basis for determining the price of Class II milk during the remaining months of the year in § 911.51(b)(2) of the order, have discontinued receiving ungraded milk, and because the limited volume of ungraded milk handled and priced by the remaining two plants does not now provide an adequate basis for properly reflecting the value of Class II milk under the order during the flush production period, it is hereby determined, in accordance with § 911.54 of the order, that the equivalent price shall be the simple average price reported paid to farmers for ungraded milk of 4.0 percent butterfat content during the month for the following plants pursuant to § 943.50 (c) of the North Texas Order No. 43, as amended:

Carnation Co., Sulphur Springs, Tex.
Borden Co., Mount Pleasant, Tex.
Lamar Creamery, Paris, Tex.

for each of the months of April, May, and June and such simple average price less 9 cents during the remaining months of the year; such equivalent prices to be effective on and after May 1, 1959.

(2) Notice of proposed rule making, public procedure thereon, and 30 days prior notice to the effective date hereof are impracticable, unnecessary, and contrary to the public interest, in that (a) the average of the prices paid farmers for ungraded milk by the two remaining plants listed in § 911.51(b)(1) which receive ungraded milk cannot be regarded to represent the true value of Class II milk under the order for the month of May and thereafter, because of the insufficient volumes involved; (b) the de-

termination of an equivalent price immediately is necessary to make possible the announcement of the Class II price under the order during the month of May 1959; (c) an essential purpose of this determination is to give all interested persons notice that the reported prices paid for ungraded milk by the two remaining plants receiving ungraded milk are not being used for the purpose of computing the Class II price under § 911.51(b)(1); and (d) this determination does not require substantial or extensive preparation by any person.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Issued at Washington, D.C., this 30th day of April 1959.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 59-3793; Filed, May 4, 1959; 8:50 a.m.]

PART 922—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Determination Relative to Expenses and Fixing of Rate of Assessment for 1958–1959 Fiscal Year

Notice was published in the April 16, 1959, daily issue of FEDERAL REGISTER (24 F.R. 2911) that consideration was being given to the proposals regarding the expenses and the fixing of the rate of assessment for the 1958–59 fiscal year under the marketing agreement and Order No. 22, as amended (7 CFR Part 922), regulating the handling of Valencia oranges grown in Arizona and designated part of California, originally effective March 31, 1954, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). After consideration of all revelant matters presented, including the proposals set forth in such notice which were submitted by the Valencia Orange Administrative Committee (established pursuant to said marketing agreement and order, as amended), it is hereby found and determined that:

§ 922.206 Expenses and rate of assessment for the 1958–59 fiscal year.

(a) The expenses necessary to be incurred by the Valencia Orange Administrative Committee, established pursuant to the provisions of the aforesaid marketing agreement and order, as amended, to enable such committee to perform its functions, in accordance with provisions thereof, during the 1958–59 fiscal year (November 1, 1958, through October 31, 1959), will amount to $172,000; and the rate of assessment, which each handler who first handles oranges shall pay as his pro rata share of the aforesaid expenses in accordance with the applicable provisions of said marketing agreement and order, as amended, is hereby fixed at seven and one-half mills ($0.0075) per carton of oranges handled by such handler as the first handler thereof during the 1958–59 fiscal year.

It is hereby further found that good cause exists for not postponing the effective time hereof until 30 days after publication in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) in that (1) shipments of oranges from Arizona and designated part of California are now being made; (2) the rate of assessment is applicable to all oranges handled during the 1958–59 fiscal year; (3) the provisions hereof do not impose any obligation on a handler until such handler handles oranges; and (4) it is essential that the specification of the assessment rate be issued immediately so that the aforesaid assessments may be collected and thereby enable the Valencia Orange Administrative Committee to perform its duties and functions in accordance with said marketing agreement and order, as amended.

Terms used herein shall have the same meaning as when used in said marketing agreement and order, as amended.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated, April 29, 1959, to become effective upon publication in the FEDERAL REGISTER.

R. S. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-3768; Filed, May 4, 1959; 8:47 a.m.]

[Peach Order 1]

PART 962—FRESH PEACHES GROWN IN GEORGIA

Limitation of Shipments

§ 962.317 Peach Order 1.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 62, as amended (7 CFR Part 962), regulating the handling of fresh peaches grown in the State of Georgia, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation of the Industry Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that this order will tend to effectuate the declared policy of the act with respect to shipments of fresh peaches grown in the State of Georgia.

(2) It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective time of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than May 11, 1959. Shipments of the early varieties of the current crop of peaches are expected to begin on or about May 18, 1959, and this regulation should be applicable, insofar as practicable, to all shipments of such peaches in order to effectuate the declared policy of the act; and compliance with this regulation will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a.m., e.s.t., May 11, 1959, and ending at 12:01 a.m., e.s.t., September 1, 1959, no handler shall ship:

(i) Peaches in any bulk lot or any lot of packages (except peaches in bulk to destinations in the adjacent markets), unless (*a*) at least 75 percent, by count, of such peaches are U.S. No. 1 quality; and (*b*) at least 90 percent, by count, of such peaches are mature: *Provided,* That peaches with split pits and hail marks may be shipped if they otherwise meet the requirements of this paragraph; or

(ii) Peaches in any bulk lot or any lot of packages (except peaches in bulk to destinations in the adjacent markets), which are of a size smaller than 1¾ inches in diameter, except that not more than ten (10) percent, by count, of such peaches in any bulk lot or any lot of packages may be of a size smaller than 1¾ inches in diameter, but not more than fifteen (15) percent, by count, of such peaches in any individual package in any lot may be of a size smaller than 1¾ inches in diameter.

(2) During the period beginning at 12:01 a.m., e.s.t., May 11, 1959, and ending at 12:01 a.m., e.s.t., September 1, 1959, the inspection requirement contained in § 962.64 of this part is hereby suspended with respect to peaches in bulk shipped to destinations in the adjacent markets.

(c) The maturity regulations contained in § 962.400 are hereby suspended with respect to shipments of peaches to destinations other than in the adjacent markets during the period specified in paragraph (b)(2) of this section.

(d) When used herein, the terms "handler," "adjacent markets," "peaches," "peaches in bulk," and "ship" shall have the same meaning as when used in the aforesaid amended marketing agreement and order, and the terms "U.S. No. 1," "diameter," "split pits," and "hail marks" shall have the same meaning as when used in the revised United States Standards for Peaches (§§ 51.1210–51.1223 of this title).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 30, 1959.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-3798; Filed, May 4, 1959; 8:51 a.m.]

PART 968—MILK IN WICHITA, KANS., MARKETING AREA

Order Amending Order

AUTHORITY: § 968.0 to § 968.111 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 968.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Wichita, Kansas, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to milk as specified in § 968.87.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than May 1, 1959.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued February 9, 1959, his revised recommended decision was issued April 9, 1959, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued April 23, 1959. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective May 1, 1959, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (See section 4(c), Administrative Procedure Act, 5 U.S.C. 1001 et seq.).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Wichita, Kansas, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

DEFINITIONS

§ 968.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

§ 968.2 Secretary.

"Secretary" means the Secretary of Agriculture or any officer or employee of the United States who is authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 968.3 Department.

"Department" means the United States Department of Agriculture or such other

Federal agency as is authorized to perform the price reporting functions specified in this part.

§ 968.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 968.5 Wichita, Kansas, marketing area.

"Wichita, Kansas, marketing area" means all the territory within Sedgwick, Cowley, Sumner, Butler, Marion, and Harvey counties, all in the State of Kansas, and all Federal, State and municipal institutions and bases located therein.

§ 968.6 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

§ 968.7 Approved dairy farmer.

"Approved dairy farmer" means any person who produces milk under a dairy farm permit or rating issued by a duly constituted health authority for the production of milk to be used for consumption as Grade A milk or produces milk acceptable to agencies of the United States Government for fluid consumption in its institutions or bases in the marketing area.

§ 968.8 Producer.

"Producer" means any approved dairy farmer whose milk is (a) received at a pool plant, or (b) caused to be diverted from a pool plant by a handler to a nonpool plant for the account of such handler. Milk so diverted shall have been deemed to have been received at the pool plant from which it was diverted.

§ 968.9 Approved plant.

"Approved plant" means any plant which is:

(a) Approved by a duly constituted health authority for the handling of milk for consumption as Grade A milk in the marketing area; or

(b) Approved for supplying milk for fluid consumption to any agency of the United States Government located within the marketing area.

§ 968.10 Pool plant.

"Pool plant" means any approved plant other than that of a producer-handler or a plant exempt pursuant to § 968.61.

(a) During any of the months of March, April, May, or June within which such plant disposes of as Class I milk an amount equal to 25 percent or more of such plant's total receipts of milk from approved dairy farmers and disposes of as Class I milk on routes in the marketing area an amount equal to 10 percent or more of such plant's total receipts from approved dairy farmers;

(b) During any of the other months within which such plant disposes of as Class I milk an amount equal to 35 percent or more of such plant's total receipts of milk from approved dairy farmers and disposes of as Class I milk on routes in the marketing area an amount equal to 15 percent or more of such plant's total receipts from approved dairy farmers;

(c) From which during the month not less than 50 percent of its total receipts from approved dairy farmers and approved plants is shipped to a plant(s) described in paragraphs (a) and (b) of this section: *Provided,* That any plant which has shipped to a plant(s) described in paragraphs (a) and (b) of this section the required percentage of its receipts during each of the months of August through November shall be designated a pool plant in each of the following months of December through July unless written request for nonpool status is furnished to the market administrator; and

(d) For the purpose of this definition the following shall apply:

(1) Milk diverted from an approved plant for the account of the handler operating such approved plant shall be considered a receipt at the approved plant from which it was diverted;

(2) Milk for which a cooperative association is defined as the handler pursuant to § 968.11 shall be deemed to have been received by such cooperative association at the pool plant; and

(3) Milk transferred as Class I milk from an approved plant to another approved plant shall be credited as a Class I disposition as follows:

(i) Except as provided in subdivision (ii) of this subparagraph, milk so transferred will be credited as a Class I disposition of the transferring plant only to the extent that classification as Class I milk is required pursuant to § 968.44(a)(2);

(ii) In any case in which the entire quantity of Class I milk disposed of in packages of a particular size and form is received in such packages from another approved plant, all such Class I disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate Class I disposition of the receiving plant.

§ 968.11 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of an approved plant;

(b) Any cooperative association with respect to the milk of any producer which such cooperative association causes to be diverted to a nonpool plant for the account of such cooperative association;

(c) Any cooperative association which chooses to report as a handler with respect to the milk of its member producers which is delivered to a pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association for the account of such cooperative association. (Such milk shall be considered as having been received by the cooperative association at the location of the plant to which it was delivered); or

(d) Any cooperative association with respect to the milk of any member producer delivered for the account of such cooperative association to the pool plant of another cooperative association.

§ 968.12 Producer-handler.

"Producer-handler" means any approved dairy farmer who operates an approved plant at which no fluid milk products are received during the month except from his own production or as transfers from a pool plant(s).

§ 968.13 Producer milk.

"Producer milk" means all the skim milk and butterfat received at a pool plant directly from producers, diverted pursuant to § 968.8, or received from a cooperative association pursuant to § 968.11 (c) or (d).

§ 968.14 Other source milk.

"Other source milk" means all the skim milk and butterfat contained in:

(a) Receipts of fluid milk products and cottage cheese during the month except (1) fluid milk products and cottage cheese received from pool plants, or (2) producer milk; and

(b) Products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 968.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, yogurt, cream (except frozen and aerated cream), cultured sour cream, and any mixture (except frozen dessert mixes and eggnog) of cream and milk or skim milk.

§ 968.16 Route.

"Route" means any delivery (including delivery by a vendor or a sale from a plant or a plant store) of any fluid milk product other than a delivery to any milk processing plant.

§ 968.17 Base milk.

"Base milk" means producer milk received by handlers from a producer which is not in excess of such producer's daily base determined pursuant to § 968.90 multiplied by the number of days during the month for which milk was received from such producer: *Provided,* That during the months of June and July of 1959 all producer milk received by handlers from a producer shall be considered as base milk: *And provided further,* That with respect to any producer "on every-other-day" delivery to a pool plant the days of nondelivery shall be considered as days of delivery for the purposes of this section and of § 968.90.

§ 968.18 Excess milk.

"Excess milk" means producer milk received by handlers from a producer which is in excess of base milk received from such producer during the month.

MARKET ADMINISTRATOR

§ 968.20 Designation.

The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be deter-

mined by, and shall be subject to removal at, the discretion of the Secretary.

§ 968.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend to the Secretary amendments thereto.

§ 968.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date upon which he enters upon his duties execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in the amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of funds provided by § 968.87 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 968.86) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part and surrender the same to his successor or to such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as the Secretary may request;

(g) Verify all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends;

(h) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who within 10 days after the date upon which he is required to perform such acts, has not:

(1) Made reports pursuant to §§ 968.30 to 968.32, or

(2) Made payments pursuant to §§ 968.80 to 968.87.

(i) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate the prices determined for each month as follows:

(1) On or before the 5th day of each month the minimum price for Class I milk computed pursuant to § 968.51(a) and the Class I butterfat differential pursuant to § 968.52(a) both for the current month; and the minimum prices for Class II and Class III milk computed pursuant to § 968.51 (b) and (c) and the Class II and Class III butterfat differentials pursuant to § 968.52 (b) and (c), all for the previous month;

(2) On or before the 11th day of each month the uniform price computed pursuant to § 968.71 and the butterfat differential computed pursuant to § 968.81 (a) both for the previous month;

(j) Prepare and disseminate such statistics and information as he deems advisable and as do not reveal confidential information; and

(k) On or before the 13th day of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers in each class by each handler who in the previous month received milk from members of such cooperative association.

REPORTS, RECORDS, AND FACILITIES

§ 968.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month each handler, except a producer-handler, shall, with respect to milk or milk products which were received or produced by such handler during such month, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(a) The quantities of skim milk and butterfat contained in milk received from each producer or approved dairy farmer, and the number of days for which milk was received from each producer;

(b) The quantities of skim milk and butterfat contained in receipts of milk, and milk products from other handlers;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk (except Class III products disposed of in the form in which received without further processing or packaging by the handler);

(d) The utilization of all skim milk and butterfat the receipt of which is required to be reported pursuant to this section;

(e) The pounds of skim milk and butterfat contained in fluid milk products on hand at the beginning and at the end of the month;

(f) Such other information with respect to the receipts and use of milk as the market administrator may request, including a separate statement of skim milk and butterfat disposed of as Class I milk on routes within the marketing area.

§ 968.31 Payroll reports.

On or before the 20th day after the end of each month each handler shall submit to the market administrator his producer payroll for such month which shall show for each producer and each approved dairy farmer:

(a) His total deliveries of base milk and total deliveries of milk in excess of base milk;

(b) The average butterfat content of his milk; and

(c) The net amount of such handler's payments to such producer or approved dairy farmer with the prices, deductions, and charges involved.

§ 968.32 Reports of producer-handlers.

Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall require.

§ 968.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts of producer milk and other source milk and the utilization of such receipts;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all fluid milk products on hand at the beginning and at the end of each month.

§ 968.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such three-year periods, the market administrator notified the handler in writing that the retention of such books and records, or specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly, upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 968.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month by a handler which is required to be reported pursuant to § 968.30 shall be classified by the market administrator pursuant to the provisions contained in § 968.41 to § 968.46.

§ 968.41 Classes of utilization.

Subject to the conditions set forth in §§ 968.43 and 968.44, classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat (1) disposed of in the form of fluid milk products except those classified pursuant to paragraph (c)(7) of this section, (2) used to produce concentrated (including frozen) milk, flavored milk or flavored milk drinks disposed of for fluid consumption neither sterilized nor in hermetically sealed cans, and (3) all other skim milk and butterfat not specifically accounted for as Class II or Class III milk.

(b) Class II shall be all skim milk (including the skim milk equivalent of concentrated products) and butterfat used to produce cottage cheese in plants approved for the sale of cottage cheese in jurisdictions within the marketing area which require that cottage cheese be made from Grade A milk.

(c) Class III milk shall be all skim milk and butterfat: (1) Used to produce any product other than those products designated as Class I or Class II pursuant to paragraphs (a) and (b) of this section; (2) used for starter churning, wholesale baking and candy making; (3) disposed of as livestock feed; (4) in skim milk dumped after prior notification to and opportunity for verification by the market administrator; (5) in shrinkage of producer milk but not in excess of 2 percent of receipts of skim milk and butterfat directly from producers, plus 1.5 percent of receipts of skim milk and butterfat, respectively, transferred in bulk from pool plants of other handlers or received directly from cooperative associations pursuant to § 968.11(c), less 1.5 percent of skim milk and butterfat, respectively, disposed of in bulk lots to the pool plants of other handlers; (6) in shrinkage of other source milk; and (7) in inventory at the end of the month as any product specified in paragraph (a) of this section.

§ 968.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat respectively, for each handler; and

(b) Prorate the resulting quantities between (1) the receipts of skim milk and butterfat in the net quantity of milk from producers, from cooperative associations pursuant to § 968.11 (c) and (d); and in bulk from pool plants of other handlers, and (2) the receipts of skim milk and butterfat in other source milk.

§ 968.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 968.44 Transfers.

Skim milk and butterfat transferred or diverted by a handler shall be classified:

(a) At the class mutually indicated in writing to the market administrator by both handlers on or before the 7th day after the end of the month which such transaction occurred, otherwise as Class I milk, if transferred or diverted in the form of milk, skim milk or cream to the approved plant of another handler, subject in either event to the following conditions:

(1) The receiving handler has utilization in such class of an equivalent amount of skim milk and butterfat, respectively; and

(2) Such skim milk or butterfat shall be classified so as to allocate to producer milk the highest-priced possible utilization.

(b) As Class I milk if transferred in the form of milk, skim milk, or cream to a producer-handler.

(c) As Class I milk if transferred or diverted in bulk in the form of milk, skim milk or cream to an unapproved plant located more than 250 miles from the approved plant by the shortest highway distance as determined by the market administrator, except that (1) cream so transferred may be classified as Class III milk if its utilization as Class III milk is established through the operation of another Federal order for another milk marketing area; or (2) cream so transferred with prior notice to the market administrator, and with each container labeled or tagged with a certificate of the transferor that such cream is sold as "Grade C cream for manufacturing only", may be classified as Class III milk, subject to such verification of alternative utilization as the market administrator may make.

(d) As Class I milk, if transferred or diverted in the form of milk, skim milk or cream in bulk to an unapproved plant located less than 250 miles from the pool plant from which transferred, unless the market administrator is permitted to audit the records of receipts and utilization at such unapproved plant, in which case the classification of all skim milk and butterfat received at such unapproved plant shall be determined and the skim milk and butterfat transferred from the approved plant shall be allocated to the highest use remaining after subtracting, in series beginning with Class I milk, receipts of skim milk and butterfat at such unapproved plant from dairy farmers who the market administrator determines constitute the regular source of supply for Class I or Class II usage as defined in §§ 968.41 (a) and (b), respectively, by such unapproved plant in markets supplied by such plant.

(e) If any skim milk or butterfat is transferred to a second plant under paragraph (d) of this section the same conditions of audit classification and allocation shall apply.

§ 968.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the report of receipts and utilization submitted by each handler and shall compute the pounds of skim milk and butterfat in each class for such handler.

§ 968.46 Allocation of skim milk and butterfat classified.

After making the computation pursuant to § 968.45 the market administrator shall determine the classification of producer milk as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk determined pursuant to § 968.41 (c) (5);

(2) Subtract from the remaining pounds of skim milk, in series beginning with the lowest priced utilization, the pounds of skim milk in other source milk other than that to be subtracted pursuant to subparagraph (3) of this paragraph;

(3) Subtract from the remaining pounds of skim milk, in series beginning with the lowest priced utilization, the pounds of skim milk in other source milk received from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement or order issued pursuant to the Act;

(4) Subtract from the remaining pounds of skim milk in series beginning with the lowest priced utilization, the pounds of skim milk in inventory at the beginning of the month in the form of any product specified in § 968.41(a);

(5) Subtract from the remaining pounds of skim milk in each class the skim milk received from other handlers in the form of milk, skim milk or cream according to its classification as determined pursuant to § 968.44(a);

(6) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) If the remaining pounds of skim milk in all classes exceed the pounds of skim milk received from producers, subtract such excess from the remaining pounds of skim milk in series beginning with the lowest priced utilization. Any amount so subtracted shall be called "overage."

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 968.50 Basic formula price to be used in determining Class I prices.

The basic formula price to be used in determining the price per hundredweight of Class I milk shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section.

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department divided by 3.5 and multiplied by 3.8:

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Carnation Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus values pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department during the month, subtract 3 cents, add 20 percent thereof and multiply by 3.8.

(2) From the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, multiply by 8.5, and then multiply by 0.962.

§ 968.51 Class prices.

Subject to the provisions of §§ 968.52 and 968.53, the minimum prices per hundredweight to be paid by each handler for milk received at his plant during the month shall be as follows:

(a) *Class I milk.* The price per hundredweight shall be the basic formula price for the preceding month plus $1.65 during all months of the year plus or minus a supply-demand adjustment of not more than 45 cents computed as follows:

(1) Divide the total receipts of milk from producers in the second and third months preceding by the total volume of Class I milk at pool plants (excluding interhandler transfers) for the same months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "current utilization percentage".

(2) Compute a "net deviation percentage" as follows:

(i) If the current utilization percentage is neither less than the minimum standard utilization percentage specified below nor in excess of the maximum standard utilization percentage specified below, the net deviation percentage is zero,

(ii) Any amount by which the current utilization percentage is less than the minimum standard utilization percentage specified below is a "minus net deviation percentage", and

(iii) Any amount by which the current utilization percentage exceeds the maximum standard utilization percentage specified below is a "plus net deviation percentage".

Delivery period for which price applies	Delivery periods used in computation	Percentages	
		Minimum	Maximum
January	October-November	126	136
February	November-December	130	140
March	December-January	128	138
April	January-February	126	136
May	February-March	130	140
June	March-April	135	145
July	April-May	141	151
August	May-June	138	148
September	June-July	130	140
October	July-August	130	140
November	August-September	128	138
December	September-October	123	133

(3) For a minus net deviation percentage the Class I price shall be increased and for a plus deviation percentage the Class I price shall be decreased as follows:

(i) One cent for each such percentage point of net deviation; plus

(ii) One cent for each such percentage point of net deviation for which a percentage point of net deviation of like direction and up to the same amount was computed pursuant to subparagraph (2) of this paragraph in the computation of the Class I price applicable for the delivery period immediately preceding; plus

(iii) One cent for each such percentage point of net deviation for which percentage points of net deviation in like direction and up to the same amount were computed pursuant to subparagraph (2) of this paragraph in the computations of each of the Class I prices applicable for the first and second month immediately preceding.

(b) *Class II milk.* The price per hundredweight shall be the Class III price for the month, plus 80 cents.

(c) *Class III milk.* The price per hundredweight shall be the higher of the prices computed pursuant to subparagraphs (1) and (2) of this paragraph.

(1) The average of the basic or field prices reported to have been paid or to be paid for ungraded milk of 3.8 percent butterfat content received from farmers during the month at the following plants for which prices have been reported to the market administrator or the Department:

Present Operator and Location

American Foods Co., Miami, Okla.
Borden Co., Ft. Scott, Kans.
Kraft Foods Co., Nevada, Mo.
Pet Milk Co., Iola, Kans.
Swift and Co., Parsons, Kans.

(2) The average price reported by the Department for the current month for milk used in the manufacture of American Cheese, evaporated milk, and butter and by-products, f.o.b. plant, United States, adjusted to 3.8 percent butterfat basis by direct ratio.

§ 968.52 Handler butterfat differential.

If the average butterfat test of Class I, Class II or Class III milk as calculated pursuant to § 968.46 is more or less than 3.8 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization for each one-tenth of one percent that such average butterfat test is above or below 3.8 percent, a butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale selling price per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the Department during the month specified below by the applicable factor listed, and rounding to the nearest one-tenth cent:

(a) *Class I milk.* Multiply such price for the preceding month by 0.120;

(b) *Class II milk.* Multiply such price for the current month by 0.120;

(c) *Class III milk.* Multiply such price for the current month by 0.115.

§ 968.53 Location differentials to handlers.

For milk which is received at a plant located more than 70 miles by the shortest highway distance, as determined by the market administrator, from the courthouse at Wichita, Kansas, and which is classified as Class I milk, the prices computed pursuant to § 968.51(a) shall be reduced by 12 cents if such plant is located more than 70 miles but not more than 80 miles from such courthouse and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 80 miles: *Provided,* That for the purposes of calculating such differential, transfers between approved plants shall be assigned to Class I milk in a volume not in excess of that by which Class I disposition at the transferee plant exceeds the receipts from producers at such plants, such assignment to transferor plants to be made first to plants at which no differential credit is applicable and then in the sequence at which the lowest location differential credit would apply.

§ 968.54 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 968.60 Producer-handlers.

Sections 968.40 to 968.46, 968.50 to 968.54, 968.61, 968.62, 968.70, 968.72 and 968.80 to 968.88 shall not apply to a producer-handler.

§ 968.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a plant specified in paragraph (a) or (b) of this section except as follows: The operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require, and allow verification of such reports by the market administrator.

(a) Any plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant qualifies as a pool plant pursuant to § 968.10 (a) or (b) and the Secretary determines that more Class I milk is disposed of from such plant to retail or wholesale outlets (except pool plants) in the Wichita marketing area than in the marketing area regulated pursuant to such other order.

(b) Any plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant qualifies as a pool plant pursuant to the provisions of § 968.10(c).

§ 968.62 Handler operating an approved plant which is not a pool plant.

Each handler who operates an approved plant which is not a pool plant during a month, shall in lieu of the payments required pursuant to § 968.80 to § 968.85, pay to the market administrator, for the producer-settlement fund, on or before the 25th day after the end of such month, the amount resulting from the computation of paragraph (a) of this section unless the handler elects the computation specified in paragraph (b) of this section.

(a) The product of the quantity of milk received by such handler which was (1) disposed of during the month in the marketing area on routes as Class I milk by the difference between the applicable Class I and the Class III prices or (2) used to produce cottage cheese so disposed of as Class II by the difference between the Class II and Class III prices.

(b) Any plus amount resulting from the following computation: From an amount equal to the net pool obligation which would be computed pursuant to § 968.70 for such handler for such month if such handler operated a pool plant deduct the gross payments made by such handler to approved dairy farmers for milk received during such month.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

§ 968.70 Net pool obligations of handlers.

The net pool obligation for milk received during each month by each handler shall be a sum of money computed as follows:

(a) Multiply the pounds of milk in each class computed pursuant to § 968.46 (c) by the applicable respective class prices and add together the resulting amounts;

(b) Add an amount computed by multiplying the pounds of overage deducted from each class pursuant to § 968.46(a)(7) and the corresponding step of § 968.46(b) by the applicable respective class prices;

(c) Add a reclassification charge equal to the difference between the Class I and Class III prices or the Class II and Class III prices, respectively, for the current month for skim milk and butterfat in inventory which is subtracted from Class I or Class II pursuant to § 968.46(a)(4) and the corresponding step of § 968.46(b) which is not in excess of the skim milk and butterfat remaining in Class III milk in the previous month pursuant to § 968.46(a)(5) and the corresponding step of § 968.46(b);

(d) For any other source skim milk or butterfat subtracted from Class I milk pursuant to § 968.46(a)(2) and the corresponding step of § 968.46(b) add an amount equal to the difference between the value of such skim milk and butterfat at the Class I price and at the Class III price and for any skim milk or butterfat so subtracted from Class II, add an amount equal to the difference in values of such skim milk and butterfat at the Class II price and the Class III price, unless the handler can prove to the satisfaction of the market administrator that such other source skim milk and butterfat was used only to the extent that producer milk was not available either directly from producers or at the plant of another handler at the applicable class price: *Provided,* That the Class I price specified above shall be subject to the location differential at plant of origin on other source milk received in the form of fluid milk products but not in the form of condensed skim milk or nonfat dry milk.

§ 968.71 Computation of uniform prices for base milk and excess milk.

For each month, the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk as follows:

(a) Combine into one total the values computed pursuant to § 968.70 for all handlers who made the reports prescribed in § 968.30 and who made the payments pursuant to §§ 968.80 and 968.83 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated cash balance in the producer-settlement fund;

(c) Subtract if the average butterfat content of the milk included in these computations is greater than 3.8 percent; or add if such average butterfat content is less than 3.8 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.8 percent by the butterfat differential computed pursuant to § 968.81 and multiplying the resulting figure by the total hundredweight of such milk;

(d) Add the total of the values of the applicable location differentials pursuant to § 968.81(b);

(e) Compute the total value on a 3.8 percent butterfat basis of the excess milk included in these computations by assigning such milk in series beginning with the lowest-priced utilization, multiplying the quantity so assigned to each use classification by the applicable class price, and adding together the resulting amounts;

(f) Divide the total value of excess milk obtained in paragraph (e) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.8 percent butterfat content received from producers;

(g) Subtract the value of excess milk obtained in paragraph (e) of this section from the value of all milk obtained in paragraph (c) of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent;

(h) Divide the amount obtained in paragraph (g) of this section by the total hundredweight of base milk included in these computations;

(i) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (h) of this section. The resulting figure shall be the uniform price for base milk of 3.8 percent butterfat content received from producers at plants within the 70-mile zone.

§ 968.72 Notification of handlers.

On or before the 11th day of each month the market administrator shall notify each handler of:

(a) The quantity and value of his milk in each class computed pursuant to §§ 968.46 and 968.70 and the totals of such quantities and values;

(b) The uniform price computed pursuant to § 968.71;

(c) The amount, if any, due such handler from the producer-settlement fund;

(d) The total amounts to be paid by such handler pursuant to §§ 968.80 and 968.83; and

(e) The amount to be paid by such handler pursuant to §§ 968.86 and 968.87.

PAYMENTS

§ 968.80 Time and method of payment.

Each handler shall make payment as follows:

(a) On or before the second working day following the 11th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the applicable uniform prices computed pursuant to § 968.71(i) and (f) for such producers' deliveries of base milk and excess milk, respectively, adjusted by the butterfat and location differentials computed pursuant to § 968.81, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date, such handler has not received full payment pursuant to § 968.84 he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 27th day of each month, to each producer (1) to whom payment is not made pursuant to paragraph (c) of this section, and (2) who is still delivering Grade A milk to such handler, an advance payment with respect to milk received from him during the first 15 days of such month computed at not less than 110 percent of the Class III price for 3.8 percent milk for the preceding month, without deduction for hauling.

(c) On or before the 14th day after the end of each month and on or before the 24th day of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which it caused to be delivered to such handler from producers, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payments due on or before the 14th day after the end of the month shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 968.31, and payments due on or before the 24th day of the month shall be accompanied by a statement of the amount of money for each producer.

(d) On or before the 10th day after the end of each month, to each cooperative association, with respect to receipts of milk for which such cooperative asso-

ciation is defined as the handler pursuant to § 968.11 (c) and (d), not less than the value of such milk as classified pursuant to § 968.44(a) at the applicable respective class price(s).

§ 968.81 Producer butterfat and location differentials.

(a) *Producer butterfat differential.* In making payments pursuant to § 968.80(a) the uniform prices per hundredweight shall be adjusted for each one-tenth of one percent that the average butterfat content is above or below 3.8 percent by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a), (b), and (c) of § 968.52, weighted by the pounds of butterfat in producer milk in each class, the result being rounded to the nearest tenth of a cent.

(b) *Producer location differential.* In making payments to producers and cooperative associations, a handler may deduct from the applicable uniform price with respect to all milk received from producers at a pool plant located more than 70 miles, by the shortest highway distance, as determined by the market administrator, from the courthouse at Wichita, Kansas, the same amount per hundredweight as is applicable to the plant, pursuant to § 968.53.

§ 968.82 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 968.83, 968.85, and 968.62, and out of which he shall make all payments to handlers pursuant to §§ 968.84 and 968.85: *Provided,* That the market administrator shall offset any such payment due to any handler against payments due from such handler. Immediately after computing the uniform prices for each month, the market administrator shall compute the amount by which each handler's net pool obligation is greater or less than the sum obtained by multiplying the hundredweight of milk of producers by the appropriate prices required to be paid producers by handlers pursuant to § 968.80 and adding together the resulting amounts, and shall enter such amount on each handler's account as such handler's pool debit or credit, as the case may be, and render such handler a transcript of his account.

§ 968.83 Payments to the producer-settlement fund.

On or before the 12th day after the end of each month, each handler shall pay to the market administrator for payment to producers through the producer-settlement fund, the amount by which the net pool obligation of such handler is greater than the sum required to be paid producers by such handler pursuant to § 968.80.

§ 968.84 Payments out of the producer-settlement fund.

(a) On or before the 13th day after the end of each month, the market administrator shall pay to each handler for payment to producers the amount by which the sum required to be paid producers by such handler pursuant to § 968.80 is greater than the net pool obligation of such handler.

(b) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 968.85 Adjustment of errors in payments.

(a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 968.83, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 968.84, the market administrator shall, within 5 days make payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure.

(b) Whenever verification by the market administrator of the payment by a handler to any producer discloses that solely through error in computation payment to such producer was in an amount more than was required to be paid pursuant to § 968.80, no handler shall be deemed to be in violation of § 968.80 if he reduces his payment to such producer next following discovery of such error by not more than such overpayment.

§ 968.86 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 968.80(a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 12th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 968.80(a) as are authorized by such producers, and, on or before the 12th day after the end of each month, pay over such deductions to the association of which such producers are members. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

§ 968.87 Expense of administration.

As his pro rata share of the expense of administration of this part each handler (1) with respect to all milk received from approved dairy farmers, except that in the case of a handler who elects to compute his obligation under § 968.62(a) only with respect to the quantity of milk disposed of as Class I or Class II in the marketing area and (2) with respect to other source milk allocated to Class I or Class II pursuant to § 968.46 during the month, shall pay to the market administrator, on or before the 12th day after the end of such month, an amount not exceeding 4 cents per hundredweight, which amount shall be determined by the market administrator subject to review by the Secretary. In the case of any handler operating a nonpool plant which is also subject to the assessment of administrative expense under another order, the payments due under this section shall be reduced by the amount of administrative expense payments under the other order.

§ 968.88 Termination of obligation.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representative all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the

said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such oblication are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

BASE RATING

§ 968.90 Determination of daily base.

(a) The daily average base of each producer who regularly delivered milk to a handler for 60 days or more during August through November of the next preceding calendar year shall be computed by the market administrator by dividing the total pounds of milk received by a handler from such producer during such months by the number of days within the period during which such producer made regular deliveries of milk in such months, or 90, whichever is greater: *Provided,* That in the case of producers delivering milk to a pool plant which was not a pool plant during all of the preceding months of August through November a daily average base for each such producer shall be computed pursuant to this paragraph on the basis of his verifiable deliveries of milk to such plant during the period August through November preceding the month in which the plant became a pool plant.

(b) The daily average base of each producer for whom no daily base may be established pursuant to paragraph (a) of this section shall be computed by the market administrator as follows:

(1) Multiply such producer's daily average deliveries of milk during the current month by the percentage that total deliveries of base milk in the current month by producers for whom daily bases are computed pursuant to paragraph (a) of this section are to total deliveries of milk in the current month by all producers; and

(2) For the months of January through July only, divide the result obtained in subparagraph (1) of this paragraph by 2.

§ 968.91 Base rules.

(a) Any producer who ceases to deliver milk to a handler for a period of more than 30 consecutive days shall forfeit his base. In the event such producer thereafter commences to deliver milk to a handler he shall be allotted a daily base computed in the manner provided in § 968.90(b).

(b) A landlord who rents on a share basis shall be entitled to the entire daily base to the exclusion of the tenant if the landlord owns the entire herd. A tenant who rents on a share basis shall be entitled to the entire daily base to the exclusion of the landlord, if the tenant owns the entire herd. If the cattle are jointly owned by the tenant and landlord, the daily base shall be divided between the joint owners according to ownership of the cattle when such share basis is terminated.

(c) A producer, whether landlord or tenant, may retain his base when moving his entire herd of cows from one farm to another: *Provided,* That at the beginning of a tenant and landlord relationship the base of each landlord and tenant may be combined and may be divided when such relationship is terminated.

(d) Base may be transferred only under the following conditions: (1) In case of the death of a producer, his base may be transferred to a surviving member or members of his family who carry on the dairy operations, and (2) on the retirement of a producer, his base may be transferred to an immediate member of his family who carries on the dairy operations.

(e) The base of two producers may be combined in the case of forming a partnership, or may be divided in the case of the dissolution of a partnership.

(f) For the purposes of this section and § 968.90 only, the term "producer" shall include any person who has been a producer as defined in § 968.8 but who has been suspended temporarily for failure to produce milk in conformity with the applicable health regulations.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 968.100 Effective time.

The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 968.101.

§ 968.101 Suspension or termination.

Any or all of the provisions of this part, or any amendment to this part, may be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary shall give and shall, in any event, terminate whenever the provisions of the act cease to be in effect.

§ 968.102 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all provisions of this part there are any obligations arising under this part the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate, shall (1) continue in such capacity until removed, (2) from time to time account for all receipts and disbursements and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (3) if so directed by the Secretary execute assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

§ 968.103 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 968.110 Agents.

The Secretary may by designation, in writing name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 968.111 Separability of provisions.

If any provisions of this part, or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D.C. this 30th day of April 1959, to be effective on and after the 1st day of May 1959.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 59-3792; Filed, May 4, 1959; 8:50 a.m.]

[Lime Order 7, Amdt. 1]

PART 1001—LIMES GROWN IN FLORIDA

Quality and Size Regulation

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 101, as amended (7 CFR Part 1001), regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the Florida Lime Administrative Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of limes, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and con-

trary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) in that, the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of limes grown in Florida.

(b) It is, therefore, ordered that the provisions of paragraph (b)(1)(iii) of § 1001.307 (Lime Order 7, 24 F.R. 3050), are hereby amended to read as follows:

(iii) Any limes of the group known as large fruited or Persian limes (including Tahiti, Bearss, and similar varieties), grown in the production area, which are smaller than 1¾ inches in diameter: *Provided,* That not to exceed 10 percent, by count, of the limes in any container may fail to meet this requirement.

(c) *Effective time.* The provisions of this amendment shall become effective at 12:01 a.m., e.s.t., May 6, 1959.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 4, 1959.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-3863; Filed, May 4, 1959; 11:58 a.m.]

[Lime Regulation 3, Amdt. 1]

PART 1069—LIMES

Pursuant to the provisions of section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the provisions of paragraph (a) of § 1069.3 (Lime Regulation No. 3; 24 F.R. 3051) are hereby amended to read as follows:

(a) On and after the effective time of this regulation, the importation into the United States of any lot of limes which in the aggregate exceeds 250 pounds, net weight, is prohibited unless:

(1) Such limes of the group known as true limes (also known as Mexican, West Indian, and Key limes and by other synonyms) meet the requirements of at least the U.S. No. 2 grade for Persian (Tahiti) limes, except as to color;

(2) Such limes of the group known as large fruited or Persian limes (including Tahiti, Bearss, and similar varieties) meet the requirements of at least the U.S. Combination, Mixed Color grade;

(3) Such limes of the group known as large fruited or Persian limes (including Tahiti, Bearss, and similar varieties) are of a size not smaller than 1¾ inches in diameter: *Provided,* That not to exceed 10 percent, by count, of the limes in any container may fail to meet this requirement; and

(4) Each such importation is made in conformance with the General Regulations (7 CFR Part 1060) applicable to the importation of listed commodities and the requirements of this regulation: *Provided,* That the provisions of § 1060.4 (e) of the General Regulations shall not apply.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to postpone the effective time of this amendment beyond that hereinafter specified (60 Stat. 237; 5 U.S.C. 1001 et seq.) in that (i) the requirements of this amended import regulation are imposed pursuant to § 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such regulation necessary; (ii) such amendment imposes the same restrictions on imports of limes as the grade, size, and quality restrictions being imposed on limes grown in Florida under Amendment 1 to Lime Order 7 (§ 1001.307; 24 F.R. 3050), issued simultaneously herewith to become effective May 6, 1959; (iii) compliance with this amended import regulation will not require any special preparation which cannot be completed by the effective time hereof; and (iv) this amended import regulation relaxes restrictions on the importation of limes.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 4, 1959, to become effective at 12:01 a.m., e.s.t., May 6, 1959.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-3864; Filed, May 4, 1959; 11:58 a.m.]

Title 14—AERONAUTICS AND SPACE

EDITORIAL NOTE

1. The heading of Title 14 is changed to read as set forth above.

2. The present parts in Title 14 (now divided into two chapters) are reassigned, without change in numbers, in three chapters, as follows:

Chapter I—Federal Aviation Agency (Parts 1–199)
Chapter II—Civil Aeronautics Board (Parts 200–399)
Chapter III—Federal Aviation Agency (Part 400 et seq.)

3. Chapter XII—National Aeronautics and Space Administration (Parts 1200–1299) of Title 32 is transferred to Title 14 as Chapter V, without change in part numbers.

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Amdt. 17]

PART 507—AIRWORTHINESS DIRECTIVES

Miscellaneous Amendments

Due to a recent fatal inflight failure of Part No. 3009 of a Mooney M20 airplane, resulting in loss of its empennage, I find that a critical situation exists with respect to this type aircraft requiring immediate inspection and modification.

In the interest of safety, compliance with the notice, procedures and effective date provisions of section 4 of the Administrative Procedure Act, is impracticable and contrary to the public interest and therefore is not required.

Accordingly § 507.10(a) is amended as follows:

59-9-1 MOONEY. Applies to all Mooney Model M20 and M20A airplanes. As a result of the investigation of an inflight failure Item (a) shall be accomplished prior to the next flight and items (b) through (g) shall be accomplished within the next 5 flight hours to detect cracks and prevent failure of empennage fuselage attachment brackets.

(a) Remove the empennage gap strip and inspect the empennage to fuselage upper attachment brackets Part No. 3009 for cracks in the radii area of the brackets near the attaching bolts using a 10 power magnifying glass. If cracked items (b) through (g) must be accomplished.

(b) Remove the empennage to fuselage upper attachment brackets Part No. 3009.

(c) Remove paint and inspect for cracks in the bend radii and in the bearing area of the bolts using a dye penetrant and a 10 power magnifying glass.

(d) Replace all cracked brackets and all brackets damaged by bolt head bearing in radii area with new brackets using ⅛ inch longer AN 4–16A bolts.

(e) Install ⅛ inch by ½ inch by 3 inch 1010 cold rolled steel bearing plates Part No. 3449 in the channel under the bolts heads, of bracket Part No. 3009. Bearing plates Part No. 3449 may be made using Part No. 3009 as a template, drill and deburr 9/32 inch holes for attach bolts and by filing 1/16 inch by 45 degree chamber along edges to provide clearance at radius of brackets.

(f) All brackets found satisfactory may be reinstalled provided they are installed with AN 4–16A bolts and bearing plates Part No. 3449.

(g) Washers used on airplanes with serial numbers 1359 and above under the attaching bolt heads shall be replaced with bearing plates Part No. 3449. This amendment shall be effective immediately.

(Sec. 313(a), 601, 72 Stat. 752, 775, 49, U.S.C. 1354, 1421)

Issued in Washington, D.C., on May 1, 1959.

JAMES T. PYLE,
Acting Administrator.

[F.R. Doc. 59-3831; Filed, May 4, 1959; 8:51 a.m.]

Chapter V—National Aeronautics and Space Administration

PART 1201—PATENTS

Subpart A—Patent Provisions for Contracts

Sec.
1201.100 Scope of subpart.
1201.101 Property rights in inventions made in the performance of work under NASA contracts.
1201.101–1 General.
1201.101–2 Use of "Property Rights in Inventions" clause.
1201.101–3 Contract administration of "Property Rights in Inventions" clause (IX–A).

AUTHORITY: §§ 1201.100 to 1201.190 issued under sec. 203, Pub. Law 85–568.

§ 1201.100 Scope of subpart.

(a) This subpart prescribes contract clauses and instructions which define and implement the policy of the National Aeronautics and Space Administration (NASA) with respect to:

(1) Inventions made in the performance of work under contract with NASA;

(2) Patent infringement liability of the United States resulting from work performed under contract with NASA;

(3) Security requirements covering patent applications containing classified subject matter; and

(4) Patent royalties payable in connection with the performance of contracts with NASA.

(b) The policies, instructions, and contract clauses prescribed by this subpart are applicable to contracts which are to be performed within the United States, its territories, its possessions, or Puerto Rico. The Office of the General Counsel, NASA, should be consulted concerning the policies, instructions, and contract clauses to be used in contracts other than those specified in the preceding sentence.

§ 1201.101 Property rights in inventions made in the performance of work under NASA contracts.

§ 1201.101–1 General.

It is the policy of the National Aeronautics and Space Administration, except as to any invention made in the performance of any work under any contract with NASA of the type described in § 1201.101–2, to pay reasonable compensation for the acquisition of rights in any invention covered by a valid patent issuing thereon and enforceable against the Government. Such rights in "background" patents will not be acquired in contracts for supplies and services except by specific negotiation for such rights, unless the patents and the rights thereunder are listed and priced as a separate contract item. Questions of validity, enforceability and infringement of patents will be determined by the Office of the General Counsel, NASA. It is also the policy of NASA to refer to the Inventions and Contributions Board for consideration for an award each invention made by an employee of a NASA contractor or subcontractor to which NASA has acquired title and with respect to which an application for patent by NASA has been authorized. The Administrator, upon his own initiative, may make monetary award on any such invention in such amount and upon such terms as he shall determine to be warranted.

§ 1201.101–2 Use of "Property Rights in Inventions" clause.

(a) A "Property Rights in Inventions" clause shall be included in every NASA contract[1] or modification thereof which entails technical, scientific, or engineering work of a kind performed in a contract having as one of its purposes (1) the conduct of basic or applied research, (2) the design or development, or manufacture for the first time, of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements, (3) the development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique, or (4) the testing or experimenting with a machine, process, or technique to determine whether the same is suitable or could be made suitable for a NASA objective. The price of any NASA contract shall in no event be increased merely by reason of the inclusion of a "Property Rights in Inventions" clause in such contract.

(b) The "Property Rights in Inventions" clause (IX–A)[2] shall be used in all contracts for work of the kind described in paragraph (a) of this section, except as otherwise provided in §§ 1201.101–6 and 1201.101–7.

§ 1201.101–3 Contract administration of "Property Rights in Inventions" clause (IX–A).

The following paragraphs of this section provide interpretations and procedures to be used in the administration of clause IX–A.

(a) The term "invention" is defined in clause IX–A as including a discovery, improvement, or innovation, since each may include an invention susceptible of protection under the United States Patent System. The contractor is not required to report every trifling discovery, improvement, or innovation that may be made under a NASA contract. However, those discoveries, improvements, and innovations which appear to fall within a statutory class of patentable subject matter (see 35 U.S.C. 101 or 171) and which have a reasonable probability of being patentable are required to be reported under paragraph (b) of clause IX–A. Any doubts respecting patentability should be resolved in favor of furnishing the report. It is not necessary that the contractor determine that the invention is patentable prior to furnishing such report.

(b) In complying with the obligation imposed by paragraph (b) of clause IX–A, the contractor may initially furnish to the contracting officer only such technical information as is required for the purpose of identifying the invention and determining its utility in the conduct of aeronautical and space activities. When requested by the contracting officer, the contractor shall prepare and furnish such additional technical descriptions of the invention as will be adequate for ready transposition to patent specification form and for effective prosecution of a patent application.

(c) If the contractor desires to avail itself of the hearing provided by subsection 305(d) of Public Law 85–568 before the Board of Patent Interferences with respect to an invention made in the performance of work under a NASA contract containing clause IX–A, the contractor must file a United States patent application for the invention in accordance with procedures set forth in paragraphs (d) and (e) of such clause and take the other appropriate actions therein specified.

(d) Contractors will be notified, by an instrument in writing, within six months from the date of receipt of written statements described in paragraph (d)(i) of clause IX–A and submitted pursuant to provisions of paragraphs (d) and (e) of said clause, of the Administrator's determination as to whether the invention was made under the circumstances set forth in paragraphs (1) and (2) of subsection 305(a) of Public Law 85–568. Where the presumption set forth in paragraph (d) of clause IX–A takes effect under any of the conditions prescribed in paragraphs (d) and (e) of said clause, the contractor will be notified promptly thereafter by an instrument in writing that the Administrator has made the determination that the invention was made under the circumstances set forth in paragraphs (1) and (2) of subsection 305(a) of Public Law 85–568. Where the contractor has filed, or caused to be filed, a patent application in accordance with the procedure set forth in paragraph (e)(v) of clause IX–A and the written statement specified therein, the contractor will be notified by an instrument in writing, within 90 days after receipt by the Administrator of such written statement, of the Administrator's decision as to whether the invention was made under the circumstances of paragraphs (1) and (2) of subsection 305(a) of Public Law 85–568, and, if it was so made, that the Administrator intends to request that the patent be issued to him on behalf of the United States when the Patent Office determines that the invention is patentable.

§ 1201.101–4 Contracts relating to atomic energy.

Paragraph (1) of clause IX–A is included for the purpose of determining the disposition of the title to and rights under any application for patents or any patent that may issue on any invention made by employees of the contractor and relating to the production or utilization of special nuclear material or

[1] It is considered that a contract made by another Government agency on behalf of NASA is a "contract of the Administration" within the meaning of subsection 305(a) of Pub. Law 85–568.

[2] The "Property Rights in Inventions" clause and all other clauses referred to subsequently herein are set forth in Appendix A (§ 1201.190) and are designated by numbers, IX–A, IX–B, etc.

atomic energy within the purview of the Atomic Energy Act, 1946 (42 U.S.C. 1801–1819) and of 1954, as amended (42 U.S.C. 2011–2296). This paragraph of clause IX–A will become effective as a part of clause IX–A only in those contracts which entail the performance of technical, scientific, or engineering work relating to atomic energy. It is suggested that the schedule of the contract recite whether the contract calls for such work.

§ 1201.101–5 Short form "Property Rights in Inventions" clause.

The "Property Rights in Inventions (Short Form)" clause (IX–B) is authorized for use in lieu of clause IX–A in contracts made with an approved NASA contract form including clause IX–B. Such NASA forms using clause IX–B will generally be limited to use in contracts with non-profit organizations for basic and applied research which do not call for the delivery to the Government of supplies, models, or prototypes.

§ 1201.101–6 Patent rights under contracts for personal services.

The "Property Rights in Inventions" clause (IX–C) shall be used in contracts entered into with an individual for personal services to be performed by that individual under Government supervision and paid for on a time basis.

§ 1201.101–7 Patent rights under product improvement programs or independent research programs.

Where NASA under its established procedures provides, as an item in the computation of overhead, financial support to (a) a contractor's product improvement program, or (b) a contractor's independent research program, the inventions resulting from such programs are not subject to the "Property Rights in Inventions" clauses IX–A, B, or C merely by virtue of the provisions of such financial support. Clause IX–D may be included in the Schedule of a contract wherein NASA is providing such support to the contractor's product improvement program or independent research program.

§ 1201.102 Follow-up of property rights in inventions.

Appropriate systems of follow-up in connection with the administration of contracts of NASA containing a "Property Rights in Inventions" clause will be maintained by the Office of the General Counsel, NASA, in order that (a) inventions in which the Government may have an interest may be properly identified, (b) suitable and necessary steps may be taken to protect the Government's interest in such inventions, and (c) formal agreements may be obtained evidencing the Government's interest.

§ 1201.103 Authorization and consent.

(a) Under 28 U.S.C. 1498, any suit for infringement of a patent based on the manufacture or use of a patented invention for the Government by a contractor or by a subcontractor (including lower-tier subcontractors) can be maintained only against the Government in the Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, in order that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent shall be given as herein provided. The "Authorization and Consent" clause (IX–E) may be included in any contract for supplies, including construction work.

(b) Greater latitude in the use of patented inventions is to be allowed in a contract for experimental, developmental, or research work than in a contract for supplies. The "Authorization and Consent" clause (IX–F) shall be included in all contracts calling exclusively for experimental, developmental, or research work, except that it need not be included in contracts made with an approved NASA contract form which omits the clause.

§ 1201.104 Patent indemnification of Government by contractor.

(a) NASA's mission is directed to (1) research into the solution of problems of flight within and outside the atmosphere, (2) the development, construction, testing, and operation for reseach purposes of aeronautical and space vehicles, and (3) such other activities as may be required for the exploration of space. Since a patent indemnity clause is not appropriate in contracts for experimental, developmental, or reseach work, such a clause is not included in this regulation.

(b) In cases where it is known that an item being procured is protected by a United States patent or patents, the inclusion of a patent indemnity clause may be appropriate. In such case, where the patent owner informs a prospective bidder or otherwise contends that the item being procured would infringe his patent or patents, the question of patent indemnification should be referred promptly to the Office of the General Counsel, NASA.

§ 1201.105 Notice and assistance.

The Government should be notified by the contractor of all claims of infringement in connection with the performance of a contract which comes to the contractor's attention, especially where the Government has given its authorization and consent for the use and manufacture in the performance of the contract of any patented invention or where the contract calls for the delivery to the Government of supplies, models, or prototypes. The contractor should also assist the Government, to the extent of evidence and information in the possession of the contractor, in connection with any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent infringement arising out of or resulting from the performance of the contract. Accordingly, the "Notice and Assistance Regarding Patent Infringement" clause (IX–G) shall be included in all contracts in excess of $10,000 for supplies, construction, or experimental, developmental, or research work, provided that such clause need not be included in contracts made with an approved NASA contract form which omits the clause.

§ 1201.106 Processing of infringement claims.

Subsection 203(b)(3) of Public Law 85–568 authorizes the Administrator "to acquire (by purchase, lease, condemnation, or otherwise), * * * real or personal property (including patents, or any interest therein) as the Administrator deems necessary * * *" This authority is applicable to the settlement of infringement claims only in the instance of a continuing or planned future infringement. Where, however, a claim is for past infringement only, the cited section of Public Law 85–568 does not provide authority for the settlement of such claims. Accordingly, no claim against the Administration for past use or manufacture by or for the Government of an invention covered by a United States patent will be considered for settlement unless it is determined that the alleged infringement is continuing or that future use or manufacture of the patented invention is foreseeable. Any such claim should be addressed to the Office of the General Counsel, NASA, and furnish information:

(a) Identifying the United States patent or application for United States patent;

(b) The interests of the claimant; and

(c) The acts alleged to constitute the unlicensed use or manufacture of the patented invention.

The claimant should also state that his claim is not based solely upon past unlicensed use or manufacture of the patented invention.

§ 1201.107 Classified contracts.

Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from an issuance of a patent, may be a violation of 18 U.S.C. 791 et seq. (Espionage and Censorship) and related statutes and may be contrary to the interest of national security. Accordingly, the "Filing of Patent Applications" clause (IX–H) shall be included in every classified contract and in every unclassified contract which covers or is likely to cover classified subject matter.

§ 1201.108 Payment of royalties.

The Government has acquired license and other rights under a large number of inventions as the result of Government-sponsored research and development. In order that the Government may determine whether the approval as an item of allowable cost of the payment of royalties by the contractor under license agreement is consistent with the rights which the Government has acquired, these payments of royalties by the contractor are allowable only to the extent authorized by the contracting officer. Accordingly, the "Payment of Royalties" clause (IX–I) shall be included in all cost reimbursement type contracts for services or supplies.

§ 1201.109 Effective date.

The provisions of this subpart A shall be effective upon publication in the FEDERAL REGISTER.

§ 1201.190 Appendix A—contract clauses prescribed by this subpart.

IX-A—PRESCRIBED BY § 1201.101-2

PROPERTY RIGHTS IN INVENTIONS

(a) As used in this clause:

(i) "Person" means any individual, partnership, corporation, association, institution or other entity;

(ii) "Made" or "making," when used in relation to any invention, means the conceptio or first actual reduction to practice of such invention;

(iii) "Invention" includes any invention, discovery, improvement or innovation.

(b) This contract is subject to the provisions of Section 305 of the National Aeronautics and Space Act of 1958 (Public Law 85-568) (hereinafter referred to as "the Act") relating to property rights in inventions. The Contractor shall furnish to the Contracting Officer a written report containing full and complete technical information concerning any invention made in the performance of any work under this contract promptly upon the making of such invention. The Contractor shall also furnish to the Contracting Officer, promptly after the execution of this contract, a written report containing full and complete technical information concerning any invention made in the performance of any work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded.

(c) In addition to the report required by (b) above, the Contractor shall make a final report prior to final settlement of this contract listing all inventions reportable under (b) above, whether or not included in prior reports.

(d) It is hereby agreed by the parties hereto that any invention made in the performance of work under this contract shall be presumed to have been made by a person described in paragraphs (1) or (2) of subsections 305(a) of the Act, and under the conditions therein described, unless the Contractor, at the time of furnishing the report of an invention required by (b) above, does one of the following:

(i) Submits to the Administrator a written statement setting forth details of the circumstances under which such invention was made so as to permit the Administrator to determine (A) whether the person who made the invention was employed or assigned to perform research, development or exploration work and the invention (1) is related to the work he was employed or assigned to perform, or (2) was within the scope of his employment duties; or (B) whether the invention is related to the contract, or to the work or duties which the person who made the invention was employed or assigned to perform, and was made during working hours or with a contribution by the Government of the use of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours; or

(ii) Requests in writing an extension of time, not exceeding 3 months, to prepare and submit the written statement described in (i) above; or

(iii) Notifies the Administrator of its intention to file a United States patent application for such invention within a period of 8 months from the date of furnishing the report of such invention required by (b) above; or

(iv) Requests an advisory opinion concerning waiver of rights of the United States with respect to such invention.

(e) (i) If the Contractor submits the statement described in (d) (i) above, the Administrator will review the information furnished by the Contractor and any other available information relating to the circumstances surrounding the making of the invention in question, and will promptly notify the Contractor of his decision as to whether the invention was made under the circumstances set forth in paragraphs (1) and (2) of subsection 305(a) of the Act.

(ii) If the Contractor requests an extension of time for submission of such statement as provided in (d) (ii) above, but fails to submit the statement within the time prescribed therein, the presumption stated in (d) above shall take effect.

(iii) If the Contractor notifies the Administrator of its intention to file a patent application as provided in (d) (iii) above, but fails to file the patent application within the 8-month period prescribed therein, the presumption stated in (d) above shall take effect.

(iv) If the Contractor requests an advisory opinion as provided in (d) (iv) above, the Contractor will be notified of action thereon within 3 months of such request. If the Contractor considers that the advisory opinion is unfavorable to its interests and desires to take issue with the presumption stated in (d) above, it shall either submit the written statement described in (d) (i) above within 3 months from the date of mailing the advisory opinion, or promptly notify the Administrator of its intention to file a United States patent application for such invention within the remaining portion of the period prescribed in (d) (iii) above. If the Contractor fails either to submit the statement within 3 months from the date of mailing such advisory opinion, or to file the patent application before expiration of the period prescribed in (d) (iii) above, the presumption stated in (d) above shall take effect.

(v) If the Contractor files a patent application within the period prescribed in (d) (iii) above, it shall file with the Commissioner of Patents, at the time of filing the application in the Patent Office, a written statement of the applicant, executed under oath, conforming to the requirements of (d) (i) above, and shall furnish to the Contracting Officer a copy of said application and of the written statement, identifying the application by serial number and filing date and the written statement by the contract number under which the invention was made. The Administrator will review the information furnished by the Contractor in such written statement and any other available information relating to the circumstances surrounding the making of the invention in question and will promptly notify the Contractor of his decision as to whether the invention was made under the circumstances set forth in paragraphs (1) and (2) of subsection 305(a) of the Act.

(f) With respect to any invention hereunder which becomes the exclusive property of the United States, the Contractor, upon written request, shall

(i) Furnish to the Contracting Officer such additional technical details available to the Contractor and covering the invention as are necessary for the preparation of a patent application, and convey or secure the conveyance of the Contractor's entire right, title, and interest in such inventions to the Government by delivering to the Contracting Officer such duly executed instruments of assignment and application and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such invention throughout the world; or

(ii) In the event of waiver under subsection 305(f) of the Act, take suitable and necessary steps (as set forth in (g) (ii) below or otherwise provided in the instrument of waiver) to protect the Government's interest in any such inventions of the Contractor or its employees and to grant to the Government the license right required by subsection 305(f) of the Act.

(g) (i) With respect to inventions as to which rights have not been vested in the Government pursuant to the provisions of Section 305 of the Act, and which were conceived or first actually reduced to practice (A) in the performance of the experimental, developmental, or research work called for or required under this contract, or (B) in the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice and cause to be practiced, by or for the United States Government, throughout the world, each such invention in the manufacture, use, and disposition according to law of any article or material, or in the use of any method. No license granted under this paragraph (g) shall convey any right to the Government to manufacture, have manufactured, or use any such invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields. The obligation of the Contractor contained in (i), (ii) (C), and (ii) (E) of this paragraph (g) shall be limited to the extent of the Contractor's right to make the specified grants or conveyances without incurring any obligation to pay royties or other compensation to others solely on account of said grant. Any license granted herein does not imply the grant to the Government of license rights under any other invention not subject to the licensing provisions hereof, notwithstanding that the practice of any invention licensed thereunder would necessarily require a license under a dominating patent or patents.

(ii) In connection with any invention covered by (g) (i) above, the Contractor shall do the following:

(A) Specify whether or not a United States patent application claiming the invention has been or will be filed by or on behalf of the Contractor;

(B) If the Contractor specifies that a United States patent application claiming such invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however if the Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use, or sale;

(C) If the Contractor specifies that a United States patent application claiming such invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:

(1) Inform the Contracting Officer in writing at the earliest practicable date of any publication of such invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication; and

(2) Convey to the Government the Contractor's entire right, title, and interest in such invention by delivering to the Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment and application and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid,

and the right to apply for and prosecute patent applications covering such invention throughout the world, subject, however, to the rights of the Contractor in foreign applications as provided in (iii) below, and subject further to the reservation of a nonexclusive and royalty-free license to the Contractor (and to its existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such invention pertains;

(D) The Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such invention;

(E) In the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any United States patent application specified in (B) above, filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title, and interest in such invention and the application, subject to the reservation as specified in (C) above; and

(F) The Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

(iii) The Contractor, or those other than the Government deriving rights from the Contractor, shall, as between the parties hereto, have the exclusive right to file applications on inventions covered in (g) (i) above in each foreign country within:

(A) Nine months from the date a corresponding United States application is filed;

(B) Six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(C) Such longer period as may be approved by the Contracting Officer.

The Contractor shall, upon written request of the Contracting Officer, convey to the Government the Contractor's entire right, title, and interest in each such invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the invention pertains.

(h) (i) In each subcontract hereunder which, pursuant to specifications or special requirements, has as one of its purposes the performance of technical, scientific, or engineering work of the kind described below, the Contractor shall include, at no increase in the cost or price of the subcontract or of this contract by reason of such inclusion, provisions which follow substantially (a) through (g) of this clause. The kinds of work referred to above are:

(A) The conduct of basic or applied research;

(B) The design or development, or the manufacture for the first time, of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements;

(C) The development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique; or

(D) The testing or experimenting with any machine, article of manufacture, composition of matter, process, or technique to determine whether the same is suitable or could be made suitable for a NASA objective.

In the event of refusal by a subcontractor to accept such provisions, the Contractor shall notify the Contracting Officer and shall not execute the subcontract in question until provisions have been negotiated with such subcontractor which, as determined by the Contracting Officer in writing, meet the requirements of the Act and are otherwise acceptable.

(ii) The Contractor is not required, when contracting with a subcontractor, to obtain on behalf of the Government any rights in the inventions covered in (g) (i) above other than as specifically provided in (g) above. However, the Contractor is not precluded from contracting with a subcontractor, for the Contractor's own benefit, for rights in inventions covered in (g) (i) above, but any cost so incurred shall not be considered as an allowable charge or cost under this contract.

(i) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract hereunder which contains the provisions required by (h) above and shall also notify the Contracting Officer when such subcontract is completed. It is understood that the purpose of the notice required by this paragraph is to permit the Government to enforce its rights under the Act. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to any invention, discovery, improvement, or innovation which may be made in the performance of any subcontract work.

(j) When the Contractor shows that it has been delayed in the performance of this contract by reason of the Contractor's inability to obtain, in accordance with the requirements of (h) above, the prescribed or other authorized patent clause from a qualified subcontractor for any item or service required under this contract for which the Contractor itself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay. Upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates and increase in contract prices based upon additional costs incurred by such delay are proper under the circumstances; and the contract shall be modified accordingly.

(k) If the Contractor fails to comply with the reporting requirements of (b) and (c) above, there shall be withheld from payment, until the Contractor shall have corrected such failures, either ten percent (10%) of the amount of this contract, as from time to time amended, or five thousand dollars ($5,000) whichever is less. After payment of eighty-five percent (85%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of such amount, or five thousand dollars ($5,000), whichever is less, shall have been set aside, such reserve or balance to be retained until the Contractor shall have furnished to the Contracting Officer a statement that the reporting requirements of (b) and (c) above have been complied with. No amount shall be withheld under this paragraph (k) when the amount specified by this paragraph (k) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (k) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(l) The provisions of this paragraph (l) shall be applicable only if the technical, scientific, or engineering work to be performed hereunder relates to atomic energy.

(i) With respect to any invention as herein defined, made by employees of the contractor and relating to the production or utilization of special nuclear material or atomic energy within the purview of the Atomic Energy Acts of 1946 (42 U.S.C. 1801–19) and of 1954, as amended (42 U.S.C. 2011–2296), the Contractor agrees

(A) The Administrator shall, in the exercise of his discretion and judgment, furnish to the United States Atomic Energy Commission (hereinafter in this paragraph (l) referred to as the "Commission") complete information regarding any such invention that the Administrator believes to relate to the production or utilization of special nuclear material or atomic energy;

(B) As to those inventions upon which said information is furnished by the Administrator to the Commission, and as to which rights have not been vested in the Government pursuant to the provisions of subsection 305(a) of the Act, the Commission shall have the sole and conclusive power to determine whether and where a patent application shall be filed, and to determine the disposition of title to and rights under any such application or any patent that may issue thereon;

(C) To obtain the execution and delivery through the Contracting Officer to the Commission of documents relating to each such invention and to do all things necessary or proper to carry out any determination of the Commission made under (B) above;

(D) Unless otherwise authorized in writing by the Commission through the Contracting Officer, to obtain patent agreements from all such employees to effectuate the purpose of this program; and

(E) Unless otherwise authorized in writing by the Commission to the Contracting Officer, to insert this paragraph (l) in all subcontracts.

(ii) No claim for a pecuniary award or compensation under the provisions of the Atomic Energy Acts of 1946 and of 1954 shall be asserted by the Contractor or its employees with respect to any invention covered by this paragraph (l).

IX–B—PRESCRIBED BY § 1201.101–5

PROPERTY RIGHTS IN INVENTIONS (SHORT FORM)

This contract and all subcontracts hereunder are subject to Section 305 of the National Aeronautics and Space Act of 1958 relating to property rights in inventions. The term invention includes any invention, discovery, improvement or innovation. The Contractor shall furnish to the Contracting Officer a written report containing full and complete technical information concerning any invention made in the performance of any work under this contract promptly upon the making of such invention and shall require all subcontractors so to do. The Contractor agrees to furnish such additional factual information required by NASA concerning the circumstances under which such invention was made, and to take such further steps as are necessary to enable the Administrator, NASA, to file patent applications on any such inventions. Prior to completion of this contract, the Contractor shall furnish to NASA a report as to whether or not any inventions of the type referred to herein have been made in the performance of work under this contract.

IX–C—PRESCRIBED BY § 1201.101–6

PROPERTY RIGHTS IN INVENTIONS (PERSONAL SERVICE CONTRACTS)

(a) This contract is subject to section 305 of the National Aeronautics and Space Act of 1958 relating to property rights in inventions. The term invention includes any invention, discovery, improvement or innova-

tion. The Contractor shall furnish to the Contracting Officer a written report containing full and complete technical information concerning any invention made in the performance of any work under this contract promptly upon the making of such invention. The Contractor agrees to furnish such additional factual information required by NASA concerning the circumstances under which such invention was made, and to take such further steps as are necessary to enable the Administrator, NASA, to file patent applications on any such inventions. Prior to completion of this contract, the Contractor shall furnish to NASA a report as to whether or not any inventions of the type referred to herein have been made in the performance of work under this contract.

(b) With respect to any invention reported or required to be reported under (a) above as to which rights have not been vested in the Government pursuant to provisions of section 305 of the NASA Act of 1958, the Contractor agrees to be bound by all provisions of Executive Order 10096, dated January 23, 1950, and any orders, rules, regulations, or the like issued thereunder.

IX–D—PRESCRIBED BY § 1201.101–7

CONTRACTORS INDEPENDENT RESEARCH PROGRAMS

Any invention made in the performance of any work by the Contractor under the Contractor's own product improvement program or the Contractor's independent research program, even though supported by an allowance of costs for such program as a part of the overhead costs hereof, will not be subject to the "Property Rights in Inventions" clause of this contract unless said work is identified in writing as being required in the performance of this contract.

IX–E—PRESCRIBED BY § 1201.103(a)

AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any patented invention (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The Contractor's entire liability to the Government for patent infringement shall be determined solely by the provisions of the indemnity clause, if any, included in the contract, and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

IX–F—PRESCRIBED BY § 1201.103(b)

AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any patented invention in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

IX–G—PRESCRIBED BY § 1201.105

NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this contract exceeds $10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

IX–H—PRESCRIBED BY § 1201.107

FILING OF PATENT APPLICATIONS

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S. Code 181–188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U.S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

IX–I—PRESCRIBED BY § 1201.108

PAYMENT OF ROYALTIES

Payment by the Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of standard commercial supplies shall not constitute items of allowable cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

T. KEITH GLENNAN,
Administrator.

[F.R. Doc. 59–3755; Filed, May 4, 1959; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7297]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Keystone Wire Cloth Co. et al.

Subpart—*Discriminating in price under section 2, Clayton Act, as amended*—Payment or acceptance of commission, brokerage, or other compensation under 2(c): § 13.800 *Buyers' agents.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 38 Stat. 730, as amended; 15 U.S.C. 13) [Cease and desist order, Keystone Wire Cloth Company (Hanover, Pa.) et al., Docket 7297, April 9, 1959]

In the Matter of Keystone Wire Cloth Company, a Corporation, Sherwatt Equipment & Manufacturing Company, Inc., a Corporation; and Arthur Watts, Individually and as an Officer of Sherwatt Equipment & Manufacturing Co.

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a manufacturer of wire cloth, with principal place of business in Hanover, Pa., with violating section 2(c) of the Clayton Act by paying commissions on sales to the broker who was president and treasurer of the corporate buyer and, with those related to him, owned more than 99 percent of its common stock; and charging said buyer and said broker president with accepting such illegal commissions.

After acceptance of an agreement providing for entry of a consent order, the hearing examiner made his initial decision and order to cease and deisist which became on April 9 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Keystone Wire Cloth Company, a corporation, and its officers, directors, representatives, agents or employees, directly or indirectly, or through any corporate or other device, in connection with the sale of wire cloth in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from: Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of, such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of its wire cloth to such buyer.

It is further ordered, That the respondent Sherwatt Equipment & Manufacturing Company, Inc., a corporation, and its officers, and Arthur Watts, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or indirectly, or through any corporate or other device, in connection with the purchase or sale of wire cloth in commerce, as "commerce" is defined in the Clayton

Act, do forthwith cease and desist from: Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of wire cloth by or for the account of respondent Sherwatt Equipment & Manufacturing Company, Inc., or upon any other purchase or sale where either respondents Sherwatt Equipment & Manufacturing Company, Inc., or Arthur Watts, or both, are the agents, representatives, or other intermediaries acting for or in behalf of, or subject to the direct or indirect control of, the buyer.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: April 9, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 59-3760; Filed, May 4, 1959; 8:45 a.m.]

[Docket 7321]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Eiler's Furs

Subpart—*Advertising falsely or misleadingly:* § 13.155 *Prices:* Percentage savings. Subpart—*Invoicing products falsely:* § 13.1108 *Invoicing products falsely:* Fur Products Labeling Act. Subpart—*Misbranding or mislabeling:* § 13.1212 *Formal regulatory and statutory requirements:* Fur Products Labeling Act. Subpart—*Neglecting, unfairly or deceptively, to make material disclosure:* § 13.1845 *Composition:* Fur Products Labeling Act; § 13.1852 *Formal regulatory and statutory requirements:* Fur Products Labeling Act; § 13.1900 *Source or origin:* Fur Products Labeling Act: *Place.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Eiler's Furs, Huron, S. Dak., Docket 7321, April 9, 1959]

In the Matter of Ethel Eiler and William Eiler, Individually and as Copartners Trading as Eiler's Furs

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a furrier in Huron, S. Dak., with violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, and by advertising in newspapers which failed to disclose that certain fur products contained artificially colored fur and to disclose the country of origin of imported furs, and which claimed percentage savings and reductions from regular prices without keeping adequate records as a basis therefor.

After acceptance of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on April 9 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That Ethel Eilers and William Eilers, individually and as copartners, trading as Eilers' Furs, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(2) That the fur product contains or is composed of used fur, when such is the fact;

(3) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur, when such is the fact;

(5) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce;

(6) The name of the country of origin of any imported furs contained in a fur product;

(7) The item number or mark assigned to a fur product.

B. Setting forth on labels affixed to fur products:

(1) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form;

(2) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, mingled with nonrequired information;

(3) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in handwriting.

C. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder with respect to the fur comprising each section.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing:

(1) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(2) That the fur product contains or is composed of used fur, when such is the fact;

(3) That the fur products contain or are composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) The name and address of the person issuing such invoice;

(6) The name of the country of origin of any imported furs contained in a fur product.

B. Failing to set forth the term "Dyed Mouton processed Lamb" in the manner required.

3. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which:

A. Fails to disclose:

(1) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(2) The name of the country of origin of any imported furs contained in a fur product.

4. Making price claims and representations respecting percentage savings claims or claims that prices are reduced from regular or usual prices unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents Ethel Eilers and William Eilers, individually and as copartners trading as Eilers' Furs (incorrectly identified in the complaint as Ethel Eiler and William Eiler, individually and as copartners trading as Eiler's Furs) shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the man-

ner and form in which they have complied with the order to cease and desist.

Issued: April 9, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 59-3761; Filed, May 4, 1959; 8:46 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 526—INDUSTRIES OF A SEASONAL NATURE

Miscellaneous Amendments

On April 3, 1959 (24 F.R. 2584) the Administrator of the Wage and Hour and Public Contracts Divisions published a final determination that the storing, and drying before storage, of grain including flaxseed, buckwheat, soybeans, and rough price in country grain elevators, public terminal and sub-terminal grain elevators, wheat flour mill elevators, non-elevator type bulk grain storing establishments, and flat warehouses constituted an industry of a seasonal nature within the meaning of section 7(b)(3) of the Fair Labor Standards Act of 1938 (52 Stat. 1063, 29 U.S.C. 207) and 29 CFR, Part 526. This determination also consolidated and revoked other seasonal industry determinations.

As a result it is necessary to editorially amend § 526.101 of 29 CFR, Part 526, to change the listings therein of outstanding seasonal industry determinations.

Accordingly, pursuant to section 3 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1002) and under the authority of section 7 of the Fair Labor Standards Act of 1938 (52 Stat. 1063, 29 U.S.C. 207), § 526.101 of 29 CFR, Part 526 is hereby amended as follows:

1. The Industry entitled "Grain, including soybeans, flaxseed and buckwheat: Storing", "Date of finding, June 13, 1941", the "Citation, 6 F.R. 2889", and the "Correction" for this Industry, "Date of finding, August 25, 1944", and the "Citation, 9 F.R. 10593" are hereby deleted.

2. The Industry entitled "Grain, including rice, flat warehousing in States of California, Washington, Oregon, and Idaho", "Date of finding, December 17, 1941", and the "Citation, 6 F.R. 6778", are hereby deleted.

3. The Industry entitled "Rice, rough southern, drying and storing including receiving", "Date of finding, September 12, 1950", and the "Citation, 15 F.R. 6197", are hereby deleted.

4. The Industry entitled "Rice, rough southern, moving to and receiving in storage", "Date of finding, August 1, 1940", and the "Citation, 5 F.R. 2758", are hereby deleted.

5. The Industry to be entitled "Grain; flaxseed, buckwheat, soybeans, rough rice: storing and drying before storage in country grain elevators, public terminal and sub-terminal grain elevators, wheat flour mill elevators, non-elevator type bulk storage establishments, and flat warehouses", "Date of finding, April 3, 1959", and the "Citation, 24 F.R. 2584" are hereby added.

(Sec. 7, 52 Stat. 1063, 29 U.S.C. 207)

This amendment shall take effect upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., this 29th day of April 1959.

CLARENCE T. LUNDQUIST, *Administrator.*

[F.R. Doc. 59-3773; Filed, May 4, 1959; 8:48 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 1840]

[Anchorage 027871]

ALASKA

Withdrawing Lands Additional to Those Withdrawn by Public Land Order No. 1673 for Use of the Department of the Army in Connection With Fort Richardson

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for use of the Department of the Army for military purposes in connection with operations at Fort Richardson, and as an addition to those withdrawn by Public Land Order No. 1673 of July 2, 1958.

SEWARD MERIDIAN

T. 14 N., R. 2 W.
Sec. 19, lot 1, that portion lying south of the Alaska Railroad right-of-way.

2. The aggregate area of the lands described in Public Land Order No. 1673 as "1,401 acres" is corrected to read "1,271 acres."

FRED G. AANDAHL, *Assistant Secretary of the Interior.*

APRIL 29, 1959.

[F.R. Doc. 59-3762; Filed, May 4, 1959; 8:46 a.m.]

[Public Land Order 1841]

[California 328049]

CALIFORNIA

Partially Revoking the Departmental Order of May 8, 1913, Newlands Project

By virtue of the authority vested in the Secretary of the Interior by section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

The departmental order of May 8, 1913, which withdrew lands for reclamation purposes in the first form in connection with the Newlands Project, California, is hereby revoked so far as it affects the following-described lands:

MOUNT DIABLO MERIDIAN

T. 10 N., R. 19 E.,
Secs. 4 and 5;
Secs. 9 to 36, inclusive.

The areas described aggregate 18,597.24 acres, of which 14,845.91 is national forest land and the remainder is non-public.

The national forest land shall, at 10:00 a.m. on June 4, 1959, be open to such forms of disposition as may by law be made of such lands.

FRED G. AANDAHL, *Assistant Secretary of the Interior.*

APRIL 29, 1959.

[F.R. Doc. 59-3763; Filed, May 4, 1959; 8:46 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter II—Forest Service, Department of Agriculture

[Reg. U-14, Amdt.]

PART 251—LAND USES

Permits for Roads and Trails

By virtue of the authority vested in the Secretary of Agriculture, Regulation U-14 of the rules and regulations governing the occupancy, use, protection and administration of the national forests, which constitutes § 251.5, Part 251, Chapter II, Title 36, Code of Federal Regulations, is hereby amended.

Paragraph (e) of § 251.5 is amended to read as follows:

(e) Trails may be constructed without permit upon consent and under the supervision of a Forest Officer.

(Sec. 1, 30 Stat. 35, as amended; 16 U.S.C. 551. Interpret or apply sec. 1, 33 Stat. 628; 16 U.S.C. 472)

Done at Washington, D.C. this 30th day of April 1959.

E. T. BENSON, *Secretary of Agriculture.*

[F.R. Doc. 59-3799; Filed, May 4, 1959; 8:51 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATION

[Amdt. 42]

MISCELLANEOUS AMENDMENTS

The following miscellaneous amendments have been made to this subchapter:

PART 1—GENERAL PROVISIONS

Subpart A—Introduction

1. In § 1.102, a cross-reference to § 1.109–4 has been added at the end of the section. Section 1.102, as revised, now reads as follows:

§ 1.102 Applicability of subchapter.

This subchapter shall apply to all purchases and contracts made by the Department of Defense, within or outside the United States, for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations), unless otherwise specified herein (but see § 1.109–4).

2. Reference to the Materiel Secretaries Council in § 1.108 has been deleted and "Materiel Secretaries Weekly Conference" substituted in lieu thereof. Section 1.108, as revised, now reads as follows:

§ 1.108 Publications of the Military Departments.

The Military Departments and procuring activities may issue directives and other publications to implement the Armed Services Procurement Regulation and other Department of Defense publications mentioned in § 1.106. Such implementation shall consist of providing for such delegations of authority and assignment of responsibilities and only such other implementing actions as are essential to the respective procurement operations of the Departments. Duplication of this subchapter shall be avoided to the extent feasible. In areas which are not fully covered by this subchapter, each Military Department may, consistent with the provisions of this subchapter, and other Department of Defense publications mentioned in § 1.106, maintain and issue such policies and procedures as are necessary for the efficient performance of procurement operations: *Provided, however,* That no Department shall adopt any policy or procedure (including methods, systems, instructions, practices, and contract clauses) which involves a major policy question without first coordinating with the other Military Departments through the ASPR Committee and obtaining the approval of the Assistant Secretary of Defense (Supply and Logistics) or, alternatively at the option of the Materiel Secretary through use of the Materiel Secretaries' Weekly Conference. Such approval involving Departmental publications shall be secured in advance unless exigency of the situation requires immediate action. Secretaries will determine whether a major policy question is involved. One copy of Departmental publications and directives (including those of procuring activities) will be furnished to the other Military Departments and to the Assistant Secretary of Defense (Supply and Logistics).

3. Sections 1.109–2 and 1.109–3 have been revised as follows:

§ 1.109–2 Deviations affecting one contract or transaction.

Deviations from this subchapter or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures: *Providing,* (a) Special circumstances justify a deviation and (b) written notice of such deviations is furnished to the Assistant Secretary of Defense (Supply and Logistics) and to the other Military Departments. Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

§ 1.109–3 Deviations affecting more than one contract or contractor.

Except as authorized in § 1.109–2, deviations from this subchapter or a Department of Defense Directive will not be effected unless approved in advance by the Assistant Secretary of Defense (Supply and Logistics): *Provided however,* That unanimous approval by the members of the ASPR Committee will constitute approval of the Assistant Secretary of Defense (Supply and Logistics) of all matters except those involving major policy. Written requests for such approval will be submitted to the Assistant Secretary of Defense (Supply and Logistics) through the ASPR Committee as far in advance as exigencies of the situation will permit, or alternatively, at the option of the Materiel Secretary concerned, through use of the Materiel Secretaries' Weekly Conference.

4. A new § 1.109–4 has been added setting forth the precedence of treaties and executive agreements over provisions of this subchapter not based on requirements of law.

§ 1.109–4 Conflicts between Government-to-Government agreements and this subchapter.

In the event of any specific conflict between the provisions of this subchapter and any treaty or executive agreement to which the United States is a party, such treaty or agreement will govern: *Provided, however,* If such conflict affects a provision of this subchapter which is based on the requirements of law, such conflict shall, in accordance with Departmental procedures, be referred to the ASPR Committee for consideration. Any procurement action which constitutes a deviation from a provision of this subchapter based on a requirement of law shall be held in abeyance pending consideration by the ASPR Committee.

Subpart C—General Policies

5. Section 1.302–3 has been revised to implement appropriate provisions of the Small Business Act, Pub. Law 85–536. The most significant change effected is that provision is made for class set-asides of selected items or groups of like items or services. Section 1.302–3, as revised, now reads as follows:

§ 1.302 Sources of supplies.

* * * * *

§ 1.302–3 Production and research and development pools.

(a) *Description.* A production or research and development pool is a group of concerns (1) who have associated together for the purpose of obtaining and performing jointly, or in conjunction with each other, contracts for supplies or services, or for research and development, for Defense use, (2) who have entered into a pool agreement governing their organization, relationship, and procedure, and (3) whose agreement has been approved either in accordance with section 708 of the Defense Production Act of 1950, as amended (Defense Production Pool), or in accordance with sections 9(d) or 11 of the Small Business Act, Pub. Law 85–536 (Small Business Pools). Pool participants are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act and of § 1.201–9.

(b) *General rule.* Except as provided in this section, a pool shall be treated for purposes of Government procurement on exactly the same basis as any other prospective or actual contractor.

(c) *Ascertainment of status.* The contracting officer is responsible for ascertaining whether a group of firms seeking to do business with the Government is a pool. In ascertaining the status of a group representing that it is a pool, contracting officers may rely on a copy of the SBA or OCDM notification of approval of the pool. Each Department will expeditiously disseminate to contracting officers information received from SBA or OCDM concerning the approval of pools.

(d) *Contracting with pools.* (1) A bid or proposal of a pool is not eligible for award to the pool unless submitted either by the pool in its own name or by an individual member expressly disclosing that it is on behalf of the pool. Except as to contracts to be awarded to incorporated pools, the contracting officer shall prior to award to a pool require to be deposited with him a certified copy of a power of attorney from each member of the pool who is to participate in the performance of the contract authorizing an agent to execute the bid, proposal, or contract on behalf of such member. A copy of each such power of attorney shall be appended to each executed copy of the contract retained by the Government.

(2) Membership in a pool shall not of itself preclude individual members from submitting bids or proposals as individuals on appropriate procurements. Bids or proposals submitted by an individual member of a pool shall not be considered when the individual member has participated in the bid or proposal submitted by the pool.

(e) *Responsibility of pool member.* Where a member of a production pool has submitted a bid or proposal in its own name, the pool agreement shall be

considered in determining its responsibility pursuant to § 1.307.

6. Section 1.305 has been revised (1) to define purchase descriptions and state the circumstances under which they may be used, (2) to include exemptions from mandatory use of Federal and military specifications, and (3) to provide guidance with respect to offshore procurement. Section 1.305, as revised, reads as follows:

§ 1.305 Specifications.

The following specifications are mandatory for use by the Department of Defense in the procurement of supplies and services covered by such specifications:

(a) Federal specifications, unless determined by the Department of Defense to be inapplicable for its use; and

(b) Coordinated Military specifications, approved by the Department of Defense for its use.

However, if it be determined in accordance with the procedures established under the Defense Standardization Program by the Assistant Secretary of Defense (Supply and Logistics) that such specifications do not meet the particular or essential needs of a bureau, service, or command, then applicable interim Federal specifications or limited coordination Military specifications should be used. Where no applicable specification exists, a purchase description (§ 1.305–6) may be used, subject to the restriction indicated in § 1.305–1(g).

§ 1.305–1 Exemptions.

Federal and military specifications need not be used for the following unless required by Departmental instructions:

(a) Purchase incident to research and development;

(b) Purchase of items for test or evaluation;

(c) Purchase of laboratory test equipment for use by Government laboratories;

(d) Purchase of items for authorized resale except military clothing;

(e) Purchase of items in an amount not to exceed $2,500 (multiple small purchases of less than $2,500 of the same item shall not be made for the purpose of avoiding the intent of this exception);

(f) Purchase of one-time procurement items; or

(g) Purchase of items for which it is impracticable or uneconomical to prepare a specification (repetitive use of a purchase description containing the essential characteristics of a specification will be construed as evidence of improper use of this exception).

§ 1.305–2 Inadequate specifications.

Whenever a specification is found to be inadequate, immediate action shall be taken to effect the issuance of an amendment or a revision in accordance with established procedures to obviate the necessity for repeated departures from the specification.

§ 1.305–3 Broad specifications.

Many adopted specifications cover several grades or types, and provide for several options in methods of inspection, etc. When such specifications are used, the invitation for bids or requests for proposals will state specifically the grade, type, or method of inspection, etc., on which bids are to be based.

§ 1.305–4 Packaging requirements.

Appropriate preservation, packaging, packing, and marking requirements will be included in contracts as applicable.

§ 1.305–5 Offshore procurement.

Contracting Officers accomplishing offshore procurement are authorized to use, where necessary, such specifications, standards, and purchase descriptions of foreign governments, or groups thereof, foreign trade associations, or purchase descriptions developed locally which will be readily understood by foreign vendors: *Provided,* Adequate measures are taken to insure satisfactory and acceptable products, including standard and interchangeable items, where required.

§ 1.305–6 Purchase descriptions.

(a) A purchase description may be used in lieu of a specification when authorized in § 1.305–1. A purchase description should set forth the essential characteristics and functions of the items or materials required. Purchase descriptions will not be written so as to specify a product or features of a product which are peculiar to one manufacturer's product and thereby preclude consideration of a product manufactured by another company unless it has been determined that the particular feature is essential to the Government's requirements, and that similar products of other companies lacking the particular feature would not meet the minimum requirements for the item. Purchase descriptions of services to be procured should outline to the greatest degree practicable the specific services the contractor is expected to perform.

(b) The minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal." When possible more than one brand name should be indicated. This technique should be used only as a last resort when an adequate specification or more detailed description is not available or cannot feasibly be made available in time for the procurement under consideration. When "or equal" procedure is used, bidders must be given the opportunity to offer items other than the brand name: *Provided,* That such items perform the functions needed by the Government in essentially the same manner as the specified products. In instances where purchase descriptions are permitted and bids or proposals are to be solicited with a description based on an "or equal" provision with reference to item names and numbers published in manufacturers' catalogs, adequate description will be included to readily identify the products, such as the complete item names, identification of catalogs, and applicable catalog numbers with the corresponding catalog descriptions. The contracting officer will also insure that a copy of any catalogs referenced, except parts catalogs, are available for review by bidders at the purchasing office, upon request.

7. Section 1.313 has been added to provide policy guidance governing the use of liquidated damages provision to construction, supply and service contracts. Section 1.313 reads as follows:

§ 1.313 Liquidated damages.

(a) This section applies to procurement by formal advertising and procurement by negotiation. Liquidated damages provisions normally will not be utilized but may be used where both: (1) The time of delivery or performance is such an important factor in the award of the contract that the Government may reasonably expect to suffer damages if the delivery or performance is delinquent, and (2) the extent or amount of such damages would be difficult or impossible of ascertainment or proof. Where a liquidated damages provision is to be used in a supply or service contract, insert the provision set forth in § 7.105–5 in accordance with the instructions thereof. Liquidated damages provisions for construction contracts are covered by the language in the Termination for Default-Damages for Delay-Time Extension Clause in § 8.709.

(b) The rate of assessment of liquidated damages must be reasonable, considered in the light of procurement requirements on a case-by-case basis, since liquidated damages fixed without reference to probable actual damages may be held to be a penalty and therefore unenforceable.

(c) The law imposes the duty upon a party injured by another to mitigate the damages which result from such wrongful action. Therefore, where a liquidated damages provision is included in a contract and a basis for termination for default exists, appropriate action should be taken expeditiously by the Government to obtain performance by the contractor or to terminate the contract. If delivery or performance is desired after termination for default, efforts must be made to obtain either delivery or performance elsewhere within a reasonable time. For these reasons, particularly close administration over contracts containing liquidated damages provisions is imperative.

(d) Whenever any contract includes a provision for liquidated damages for delay, the Comptroller General on the recommendation of the Secretary concerned is authorized and empowered to remit the whole or any part of such damages as in his discretion may be just and equitable. Accordingly, recommendations concerning such remissions may be transmitted to the Secretary concerned in accordance with Departmental procedures.

Subpart G—Small Business Concerns

8. Sections 1.700; 1.701(e); 1.702(a); 1.705–1, and 1.705–3 (a) and (b); 1.705–7, and 1.706 have been revised to implement appropriate provisions of the Small Business Act, Pub. Law 85–536. The most significant change effected is that provision is made for class set-asides of selected items or groups of like items or services. These sections, as revised, now read as follows:

§ 1.700 Scope of subpart.

To implement the Small Business Act, Pub. Law 85–536, and the Armed Services Procurement Act, as amended, this subpart sets forth (a) policy with reference to small business concerns, (b) policy governing relationship with the Small Business Administration, (c) small business set-aside procedures, and (d) the Defense Small Business Subcontracting Program. This subpart applies only in the United States, its Territories, its possessions, and Puerto Rico.

§ 1.701 Definitions.

* * * * *

§ 1.701–1 Small business concern.

* * * * *

(e) *Small business certificate.* A small business certificate is a certificate issued by SBA pursuant to the authority contained in sections 3 and 8(b)(6) of the Small Business Act certifying that the holder of the certificate is a small business concern for the purpose of Government procurement and in accordance with the terms of the certificate.

§ 1.702 General policy.

(a) It is the policy of the Department of Defense to place a fair proportion of its total purchases and contracts for supplies and services (including, but not limited to, contracts for maintenance, repair, and construction) with small business concerns.

§ 1.705 Cooperation with the Small Business Administration.

§ 1.705–1 General.

The Assistant Secretary of Defense (Supply and Logistics) and the Administrator, SBA, are responsible for consulting, and cooperating in establishing policies and programs for small business participation in Defense procurement. All Department of Defense purchasing activities are responsible for working with SBA in carrying out these policies and programs, in accordance with the provisions of § 1.705.

§ 1.705–3 Screening of procurements.

(a) *Individual set-asides.* (1) SBA representatives, when properly authorized and cleared for security, shall, upon request, be afforded an opportunity at the purchasing activity to review all proposed classified and unclassified Invitations for Bids and Requests for Proposals unless both (i) it is anticipated that the resulting contract or contracts will not exceed $10,000 and (ii) the Head of the Purchasing Activity determines that such review would unduly delay the procurement process. Where it is anticipated that the resulting contract or contracts will exceed $10,000, such SBA representative shall, upon request, be afforded an opportunity to make recommendations concerning Invitations for Bids and Requests for Proposals, including that they be exclusively or partially set aside for small business concerns. Where the Invitations for Bids or Requests for Proposals are reviewed by an SBA representative and it is anticipated that the resulting contract or contracts will not exceed $10,000, and if the Head of the Purchasing Activity approves, a similar opportunity to make recommendations will be afforded to the SBA representative.

(2) In any case, the contracting officer shall afford the SBA representative an opportunity to recommend, within a reasonable time, appropriate names of small business concerns for inclusion in the list of bidders or firms to be solicited in connection with a particular procurement.

(b) *Class set-asides.* (1) SBA representatives shall also be afforded an opportunity to make recommendations that current and future procurements, or portions thereof, of selected items or services or groups of like items or services shall be set aside, as provided in § 1.706, for exclusive small business participation. Such set-asides, when approved by the contracting officer, shall be known as class set-asides.

(2) SBA representatives, upon request, shall be furnished such available or reasonably obtainable information as may be required for the SBA to determine whether or not to recommend a class set-aside.

§ 1.705–7 Performance of contract by SBA.

In accordance with section 8a of the Small Business Act, in any case in which the Administrator of SBA certifies to the Secretary concerned that SBA is competent to perform any specific contracts, the contracting officer is authorized, in his discretion, to award the contract to SBA upon such terms and conditions, consistent with this Regulation, as may be agreed upon between SBA and the contracting officer.

§ 1.706 Set-Asides for small business.

§ 1.706–1 General.

Any individual procurement or class of procurements or an appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action is (a) jointly determined by an SBA representative and the contracting officer, or (b) if no SBA representative is available, is unilaterally determined by the contracting officer to be in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Insofar as practical, joint determinations shall be used as a basis for set-asides rather than unilateral determinations; but the impracticability of obtaining a joint determination should not be treated as an obstacle to making a set-aside based on a unilateral determination in an otherwise appropriate case.

§ 1.706–2 Review of SBA set-aside proposals.

(a)(1) Upon a recommendation of an SBA representative that an individual procurement or class of procurements, or portion thereof, be set aside for small business, the contracting officer shall promptly either (i) concur in the recommendation, or (ii) disapprove, stating in writing his reasons for disapproval. The SBA representative shall be allowed two working days to appeal any such disapproval to the head of the purchasing activity or his designee for decision. During consideration of such appeal there shall be full and free interchange of all pertinent facts between the SBA representative and the purchasing activity concerned. Within one working day after receipt of a decision of the head of the purchasing activity or his designee disapproving a recommended set-aside, the SBA representative may request the contracting officer to suspend any procurement actions affected by the recommended set-aside pending a further appeal by the Administrator of SBA to the Secretary of the Military Department concerned for determination. SBA shall be allowed seven working days after making any such request within which (*a*) the Administrator of SBA may appeal the decision of the head of the purchasing activity or his designee to the Secretary concerned, and (*b*) to notify the contracting officer whether such appeal has in fact been taken. If such notification is not received by the contracting officer within the seven-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that no appeal to the Secretary was taken. Where an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the seven-day period, the head of the purchasing activity shall, in accordance with Departmental procedures, forward to the Secretary concerned a full justification of his decision.

(2) Any procurement action affected by a set-aside recommendation which has been disapproved by the contracting officer and appealed by the SBA representative shall be suspended pending the decision of the head of the purchasing activity or his designee. If the decision sustains the disapproval and if the SBA representative requests further suspension in accordance with subparagraph (1) of this paragraph the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in subparagraph (1) of this paragraph) or (ii) the matter is determined by the Secretary of the Military Department concerned: *Provided,* That such suspension shall not apply to any particular procurement action which, as determined by the contracting officer, must, in order to protect the public interest, be initiated without delay and as to which he inserts in the contract file a statement signed by him justifying the determination. The contracting officer shall promptly notify the SBA representative of any procurement action initiated pursuant to the proviso of the preceding sentence.

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large percentage of previous procurements of the item in question has been placed with small business concerns;

(2) The item to be purchased is on a Planned Procurement List or under the

Production Allocation Program; except that a total set-aside shall not be authorized when one or more large business Planned Producers hold valid Tentative Schedules of Production (DD Form 406) for the item unless it has been confirmed that none of such large businesses desires to participate in the procurement;

(3) The item to be purchased is on a Qualified Products List; except that a total set-aside shall not be authorized when the products of one or more large businesses are on the Qualified Products List unless it has been confirmed that none of such large businesses desires to participate in the procurement;

(4) A period of less than thirty days from date of issuance of invitations for bids or requests for proposals is prescribed for the submission of the bids or proposals;

(5) The procurement is classified;

(6) Small business concerns are receiving a fair proportion of the total tracts for supplies or services; or

(7) A class set-aside of the item or service concerned has been made at some other purchasing activity.

(c) In approving a proposed class set-aside, the contracting officer shall make sure that the set-aside determination (1) specifically identifies the items or services subject thereto, (2) provides that it will, at least once each year, be reviewed jointly by an SBA representative and the contracting officer to determine whether it should be withdrawn (see § 1.706–3 for withdrawal procedure), (3) provides that it does not apply to any individual procurement for which small purchase procedures are to be used, and (4) provides that such class set-aside applies only to the purchasing activity making or participating in the set-aside determination. Any class of procurements proposed to be totally set aside shall satisfy the requirements of § 1.706–5(a). With respect to any class of procurements proposed to be partially set aside, the set-aside determination shall specify that it is not applicable to any individual procurement which is not severable into two or more economic production runs or reasonable lots.

§ 1.706–3 Withdrawal or modification of set-asides.

(a) Each individual procurement governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications for the items or services, delivery requirements, or competitive market conditions, since the initial approval of the class set-aside, are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability.

(b) (1) If, prior to the award of a contract involving an individual or class set-aside for small business, the contracting officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), the contracting officer may withdraw a unilateral set-aside determination or initiate the withdrawal of a joint set-aside determination. Similarly, a class set-aside may be modified so as to withdraw one or more individual procurements therefrom. In the case of a joint set-aside determination, if the SBA representative does not agree to a withdrawal or modification, the SBA representative shall be allowed two working days to appeal the matter to the head of the purchasing activity or his designee for decision. Within one working day after receipt of a decision of the head of the purchasing activity or his designee approving such a withdrawal or modification, the SBA representative may request the contracting officer to suspend any procurement actions which would be affected by the withdrawal or modification pending a further appeal by the Administrator of SBA to the Secretary of the Military Department concerned for determination. SBA shall be allowed seven working days after making any such request within which (i) the Administrator of SBA may appeal the decision of the head of the purchasing activity or his designee to the Secretary concerned, and (ii) to notify the contracting officer whether such an appeal has in fact been taken. If such notification is not received by the contracting officer within the seven-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that no appeal to the Secretary was taken. Where an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the seven-day period, the head of the purchasing activity shall, in accordance with Departmental procedures, forward to the Secretary concerned a full justification of his decision.

(2) Any procurement action affected by a proposed withdrawal or modification which has been appealed by the SBA representative shall be suspended pending the decision of the head of the purchasing activity or his designee. If the decision sustains the withdrawal or modification, and if the SBA representative requests further suspension in accordance with subparagraph (1) of this paragraph, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in subparagraph (1) of this paragraph) or (ii) the matter is determined by the Secretary of the Military Department concerned: *Provided,* That such suspension shall not apply to any particular procurement action which, as determined by the contracting officer, must, in order to protect the public interest, be initiated without delay and as to which he inserts in the contract file a statement signed by him justifying the determination. The contracting officer shall promptly notify the SBA representative of any procurement action initiated pursuant to the proviso of the preceding sentence.

(3) A signed memorandum of any withdrawal or modification shall be made and retained.

§ 1.706–4 Reporting for Department of Commerce procurement synopsis.

See § 2.206–3.

§ 1.706–5 Total set-asides.

(a) The entire amount of an individual procurement or class of procurements (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 1.706–1) where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-asides shall not be made unless such a reasonable expectation exists; however, see § 1.706–6 as to partial set-asides.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising." The latter method shall be used wherever possible. Invitations for Bids and Requests for Proposals shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Part 2 of this subchapter, except that bids and awards shall be restricted to small business concerns.

(c) In procurements involving total set-asides for small business, each Invitation for Bids or Requests for Proposals shall contain substantially the following notice:

NOTICE OF SMALL BUSINESS SET-ASIDE

Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the contracting officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of government procurement is placed with small business concerns. A small business concern is a concern that—

(i) Is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or

(ii) Is certified as a small business concern by the Small Business Administration.

In addition to meeting these criteria, a dealer submitting bids or proposals in its own name must be a regular dealer (non-manufacturer) and agree to furnish the product of a small business manufacturer or producer in the performance of the contract: *Provided,* That this requirement as to dealers does not apply to construction or service contractors. The right is reserved to reject any or all bids or proposals when it is in the interest of the Government to do so. Bids or proposals received from firms which are not small business concerns shall be considered nonresponsive.

§ 1.706–6 Partial set-asides.

(a) A portion of a procurement (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 1.706–1) where—

(1) The procurement is not appropriate for total set-aside pursuant to § 1.706–5;

(2) The procurement is severable into two or more economic production runs or reasonable lots; and

(3) Two or more small business concerns are expected to have the technical competency and productive capacity to

furnish a severable portion of the procurement at a reasonable price.

Similarly, a class of procurements (including but not limited to contracts for maintenance, repair, and construction) may be partially set aside in accordance with § 1.706–2(c).

(b) Where a portion of a procurement is to be set aside for small business pursuant to paragraph (a) of this section, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity.

(c) In procurements involving partial set-asides for small business, each Invitation for Bids or Requests for Proposals shall contain substantially the following notice:

NOTICE OF SMALL BUSINESS SET-ASIDE

(units) of this procurement are to be awarded only to one or more small business concerns. Negotiation for award of the portion of this procurement set-aside for small business will be conducted only with responsible small business concerns who submit responsive bids or proposals on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the order of their bids or proposals on the non-set-aside portion, beginning with the lowest responsive bid or proposal. This action is based on a determination by the contracting officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full production capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of government procurement is placed with small business concerns. A small business concern is a concern that—

§ 1.706–7 Contract authority.

Contracts for total or partial set-asides, whether entered into by conventional negotiation (see §§ 1.706–5(b) and 1.706–6(d)) or by "Small Business Restricted Advertising" (see § 1.706–5(b)), shall cite as authority 10 U.S.C. 2304(a)(17) and section 15 of the Small Business Act in the case of a joint determination, or 10 U.S.C. 2304(a)(1), in the case of a unilateral determination (see § 3.201–2(b)(2)).

§ 1.707 Subcontracting.

* * * * *

§ 1.707–5 Maintenance of records.

(a) Each Military Department maintains a record of the extent of subcontracting and subcontracting to small business concerns by contractors which adopt "Defense Subcontracting Small Business Programs" under § 1.707–3. Such information is transmitted semi-annually to the Assistant Secretary of Defense (Supply and Logistics). Pertinent records are compiled from submissions on DD Form 1140 (see § 1.707–3(f)). A contractor which does not adopt a "Defense Subcontracting Small Business Program," or does adopt one but does not furnish subcontracting reports, shall be recorded for the period in question as "Not Reporting."

(b) Records pertaining to the initiation of individual procurements under each class set-aside shall be maintained by individual purchasing activities. Such records shall include: IFB or RFP Number and Date; Item or Service; Unilateral or Joint Class Set-Aside and Number; Estimated Amount of Procurement; and Estimated Amount of Set-Aside. A copy of each such record shall be made available by each purchasing activity to SBA, upon request.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 2—PROCUREMENT BY FORMAL ADVERTISING

Subpart D—Opening of Bids and Award of Contracts

1. Pursuant to Comptroller General Decision B–120281, dated November 25, 1958, revised § 2.405–2(b) allows limited redelegation of authority to permit withdrawal of bids in situations described in § 2.405–2(a)(1) (where clear and convincing evidence establishes existence of a mistake).

Section 2.405–2(b), as revised, reads as follows:

§ 2.405 Mistakes in bids.

* * * * *

§ 2.405–2 Mistakes disclosed after opening and prior to award other than obvious or apparent mistakes of a clerical nature.

* * * * *

(b) Authority for making the determinations set forth in paragraph (a) of this section may be delegated, without power of redelegation, as set forth below:

(1) Department of the Army: To the Chief, Contracts Branch, Deputy Chief of Staff for Logistics; Chief of Engineers; Chief of Ordnance; The Quartermaster General.

(2) Department of the Navy: To the Director, Contracts Division, Bureau of Yards and Docks; the Assistant Chief for Purchasing, Bureau of Supplies and Accounts.

(3) Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Materiel Command.

The above authority shall not be redelegated except that authority for making the determinations set forth in paragraph (a) of this section may be redelegated, without power of further redelegation, to purchasing activities having legal counsel available.

2. In § 2.406, the word "preliminary" has been deleted from the last sentence thereof. Section 2.406, as revised, reads as follows:

§ 2.406 Award.

Award shall be made with reasonable promptness by written notice (see §§ 16.101–2 and 16.102–2) to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: *Provided*, That an award shall not be made to other than the lowest responsible bidder except in accordance with procedures prescribed by each Military Department. Award will be effected by mailing or delivering to the bidder a properly executed award or notice of award.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 4—COORDINATED PROCUREMENT

Subpart B—Policies and General Principles

Section 4.204, as revised, reads as follows:

§ 4.204 Items in short supply.

In cases where shortages develop in supplies being purchased, the normal procedure will be to resolve the problem on a Departmental level. If mutual agreement cannot be reached, the subject shall be referred to the Assistant Secretary of Defense (Supply and Logistics) for decision.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 6—FOREIGN PURCHASES

Subpart F—Duty and Customs

Subpart F of this part has been revised to provide for the duty-free importation of certain supplies (not including equipment) for vessels or aircraft operated by the United States, under the authority of 19 U.S.C. 1309(a)(1). Subpart F, as revised, reads as follows:

§ 6.601 Customs duties on foreign purchases.

Duty must ordinarily be paid in connection with the importation of supplies purchased outside of the United States, except that the importation (a) of "emergency purchases of war material abroad" by a Military Department is exempt from duty (10 U.S.C. 2383), and (b) of certain supplies (not including equipment) for vessels or aircraft operated by the United States is also exempt from duty (19 U.S.C. 1309). Where the importation of supplies is subject to customs duties, a Military Department is exempt from any requirements of a customs bond.

§ 6.602 Emergency purchases of war material abroad.

§ 6.602–1 General.

This section furnishes guidance as to what constitutes "emergency purchases of war material abroad," prescribes the conditions under which duty-free entry certificates may be issued in connection with the importation of such purchases and sets forth the form of certificate to be utilized. The procedures to be followed in the issuance of such certificates shall be as prescribed by the respective Departments.

§ 6.602–2 War materials.

As used in this section the term "war material" includes the following:

(a) Weapons, munitions, aircraft, vessels, or boats;

(b) Agricultural, industrial, or other supplies used in the prosecution of war or for the national defense;

(c) Supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of the supplies set forth in paragraphs (a) and (b) of this section above.

§ 6.602–3 Emergency purchases.

As used in this section, the term "emergency purchases" includes the following:

(a) War material purchased by any Department in time of war or a national emergency, including any war material received in exchange for anything of value obtained under reciprocal aid or other statutory authority;

(b) War material purchased because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;

(c) Captured enemy war material;

(d) Materials requisitioned by United States Forces abroad;

(e) Materials rebuilt from other materials owned by, captured by, or turned over to United States Forces; and

(f) War materials procured for the use of United States Forces abroad or United States vessels in foreign waters.

§ 6.602–4 Use of duty-free entry certificates.

The issuance of duty-free entry certificates in appropriate situations will result in important savings for military appropriations. At the same time, any procedure established for the issuance of such certificates must recognize that anything other than a careful selection of the proper situations where such certificates are to be issued may fail to save funds and may result in unanticipated advantages to contractors, especially in situations involving fixed-price contracts. Considerations which are pertinent to the selection of those cases where such certificates should be issued include (a) the savings to be accomplished by the issuance of the certificate; (b) the administrative burden and cost of processing the certificate; and (c) the degree of supervision which can be exercised by the Government over the supplies or materials to be imported to verify that the full benefit of the certificate inures to the Government. The latter consideration is particularly significant in the case of fixed-price contracts since title to the importation does not generally vest in the Government until delivery of the end product.

§ 6.602–5 Limitations.

Subject to the considerations set forth in § 6.602–4, a duty-free entry certificate may be issued in accordance with Departmental procedures when an "emergency purchase of war material" is made under the following circumstances:

(a) Direct purchases abroad regardless of whether title passes at point of origin or at destination in the United States: *Providing,* The contract states that the final price is exclusive of duty;

(b) Purchases abroad by a Government prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in paragraph (c) of this section should be followed; and

(c) Purchases abroad by a fixed-price contractor, fixed-price subcontractor, or cost-type subcontractor where a fixed-price prime or fixed-price subcontract intervenes: *Provided,* (1) The fixed-price prime and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (2) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that duty will be paid if such supplies or any portion thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (3) such procurement abroad is authorized by the terms of the prime contract, the applicable subcontract, or by the contracting officer.

§ 6.602–6 Duty-free entry certificate.

The duty-free entry certificate referred to in this section will be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto, and will be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

I certify that the procurement of this material constituted an emergency purchase of war material abroad by the Department of the (indicate Army, Navy, or Air Force) and it is accordingly requested that such material be admitted free of duty pursuant to 10 U.S.C. 2383.

(Name)

(Title), who has been designated to execute free entry certificates for the above-named Department

---
(Grade)

(Organization)

§ 6.603 Supplies for vessels or aircraft operated by the United States.

(a) Subject to the considerations set forth in § 6.602–4, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this section, the term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation and maintenance of the vessel or aircraft, such as fuel oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment". The procedures to be followed in the issuance of such certificates shall be as prescribed by the respective Departments.

(b) The duty-free entry certificate referred to in this section will be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and will be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

I certify that the procurement of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)

(Title)

(Organization)

§ 6.604 Customs duties and drawbacks.

Whenever any Department purchases supplies with respect to which there might arise a claim to a refund or drawback of customs duties paid thereon (to the extent such drawback is authorized pursuant to the Tariff Act of 1930, 19 U.S. Code, Chapter 4), the price to be paid shall ordinarily include the customs duties, and accordingly the supplier will have no claim to a drawback. On the other hand, when the price to be paid for any such purpose does not include the cusoms duties, then the supplier will have the right to claim any drawback with respect to duties paid by the supplier: *Provided,* (a) He has reserved such right in connection with such sale or consignment and (b) he produces evidence that such reservation was made with the knowledge and consent of the exporter.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 7—CONTRACT CLAUSES

Subpart A—Clauses for Fixed-Price Supply Contracts

Section 7.105–5, relative to the contract clause, has been revised to delete the introductory language on applicability, and to refer therefor to § 1.313. Section 7.105–5, as revised, reads as follows:

§ 7.105–5 Liquidated damages.

In accordance with § 1.313, where a liquidated damages provision is to be used in a supply contract, the following provision shall be inserted as paragraph (f) of the Default clause (§ 8.707 of this subchapter) and the present paragraph (f) of that clause shall be redesignated "(g)":

(f) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any exten-

sion thereof, the actual damage to the Government for the delay will be difficult or impossible to determine. Therefore in lieu of actual damages the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount set forth elsewhere in this contract. Alternatively, the Government may terminate this contract in whole or in part as provided in paragraph (a) of this clause, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph (b) above, for such liquidated damages accruing until such time as the Government may reasonably obtain delivery or performance of similar supplies or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph (c) above, and in such event, subject to the "Disputes" clause, the Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgment the findings of fact justify an extension.

Subpart B—Clauses for Cost-Reimbursement Type Supply Contracts

The allowable cost, fee, and payment clauses in § 7.203–4 have been revised to implement Department of Defense Directive 7800.6, which requires contractors under cost-reimbursement contracts to maintain a reasonable investment in inventories, work-in-process, and services prior to delivery of the end items. The change authorizes reimbursement of primes for 100 percent of those payments made to subcontractors so long as such payments do not exceed the 80 percent reimbursement basis for cost-type subcontracts, or 70 percent progress payment basis for fixed-price subcontracts. While this procedure still results in a 20 percent withholding, the withholding is distributed on the basis of performance, thus removing the complaint that primes are required to finance their subcontractors. The specific paragraphs which have been revised in these clauses are as follows:

In the clause under § 7.203–4(a), subject "Allowable Cost, Fixed Fee, and Payment", paragraph (c) (1) and (3) thereof; in the clause under § 7.203–4(b), subject, "Allowable Cost, Incentive-Fee, and Payment", paragraph (c) (1) and (3). Two sentences have been added to § 7.203–4(c) concerning certain approvals in the clauses under paragraphs (a) and (b). These revised paragraphs now read as follows:

§ 7.203–4 Allowable cost, fee, and payment.

(a) * * *

ALLOWABLE COST, FIXED FEE, AND PAYMENT

* * * * *

(c) (1) As promptly as may be practicable after the receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, and subject to the provisions of paragraph (d) below, make payment thereon, as approved by _____,* to the extent of:

(i) 100 percent of such approved costs representing progress payments to subcontractors under fixed price type subcontracts: *Provided,* That such payments by the Government to the Contractor shall not exceed 70 percent of the costs incurred by such subcontractors,

(ii) 100 percent of such approved costs representing cost reimbursement to subcontractors under cost reimbursement type subcontracts: *Provided,* That for cost reimbursement type subcontracts not covered by the exceptions listed in § 3.404–3(d)(2) of this subchapter, as in effect on the date of this contract, such payments by the Government shall not exceed 80 percent of the costs incurred by such subcontractors, and

* * * * *

(3) The total of the amounts which may be withheld at any one time under both (c)(1) and (c)(2) above shall not exceed the greatest amount which may then be withheld under either (c)(1) or (c)(2), whichever permits the greater withholding at that time.

(b) * * *

ALLOWABLE COST, INCENTIVE FEE, AND PAYMENT

* * * * *

(c)(1) As promptly as may be practicable after the receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, and subject to the provisions of paragraph (d) below, make payment thereon, as approved by _____,* to the extent of:

(i) 100 percent of such approved costs representing progress payments to subcontractors under fixed price type subcontracts: *Provided,* That such payments by the Government to the Contractor shall not exceed 70 percent of the costs incurred by such subcontractors,

(ii) 100 percent of such approval costs representing cost reimbursement to subcontractors under cost reimbursement type subcontracts: *Provided,* That for cost reimbursement type subcontracts not covered by the exceptions listed in § 3.404–3(d)(2) of the Armed Services Procurement Regulation, as in effect on the date of this contract, such payments by the Government shall not exceed 80 percent of the costs incurred by such subcontractors, and

(iii) 80 percent of all other such approved costs.

* * * * *

(3) The total of the amounts which may be withheld at any one time under both (c)(1) and (c)(2) above shall not exceed the greatest amount which may then be withheld under either (c)(1) or (c)(2), whichever permits the greater withholding at that time.

(c) * * *

(c)(1) In the foregoing clauses, insert, in contracts of the Department of the Army and the Department of the Air Force, the words, "the Contracting Officer," and insert, in contracts of the Department of the Navy the words "the Comptroller of the Navy (Contract Audit Division)" in the spaces designated by an asterisk (_____*). For approvals with regard to fixed-price type subcontracts, pursuant to paragraph (c)(1)(i) of the foregoing clauses, the standards shall be the same as those governing progress payments on fixed-price type prime contracts. For approvals with regard to cost-reimbursement type subcontracts, pursuant to paragraph (c)(1)(ii) of the foregoing clauses, the standards shall be the same as those contained in § 3.404–3(d) for prime contracts.

The Records clause in § 7.203–7 has been revised to reduce the period of retention of contractors' records to three years, in accordance with Comptroller General Decision B–100489, dated September 10, 1958. To avoid an inconsistency, the clause "Records, Universities", formerly set forth in § 7.403–8, has been deleted. A revised clause for nonprofit educational institutions will be published in an early revision.

Section 7.203–7, as revised, now reads as follows:

§ 7.203–7 Records.

(a) Except as provided in paragraph (h) of this section, insert the following clause:

RECORDS

* * * * *

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available its records for a period of three years (unless a longer period of time is provided by applicable statute or by any other clause in this contract) from the date of the voucher or invoice submitted by the Contractor after the completion of the work under the contract and designated by the Contractor as the "completion voucher" or "completion invoice" or, in the event this contract has been completely terminated, from the date of the termination settlement agreement: *Provided, however,* That records which relate to (A) appeals under the clause of this contract entitled "Disputes," (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs or expenses of the contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of, but in no event for less than the three-year period mentioned above.

(b) In the case of contracts which establish separate periods of performance, the following alternate subparagraphs (a) (4) and (5) may be substituted for the corresponding subparagraphs of the clause prescribed by (a) above.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available its records for a period of three years (unless a longer period of time is provided by applicable statute or by any other clause in this contract) from the date of the voucher or invoice submitted by the Contractor after the completion of work performed during any separate period of performance established by this contract or by any amendment or supplemental agreement, without regard to former or subsequent periods of performance: *Provided, however,* That records which relate to (A) appeals under the clause of this contract entitled "Disputes," (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs or expenses of the contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of, but in no event for less than the three-year period mentioned above: *And provided further,* That if the Contractor plans to destroy any records sooner than three years after the date of the voucher or invoice to be submitted after the completion of the work performed during the total of the periods of performance established by this contract and all amendments and supplemental agreements thereto, which voucher or invoice shall be designated "completion voucher" or "completion invoice," it shall give written notice to the Contracting Officer and to the Comptroller General of the United States, specifying any records which it plans to destroy after the expiration of 90 days from the receipt of such notice, and shall retain any records which either the Contracting Officer or the Comptroller General, by written notice within 90 days after receipt of the Contractor's notice, requires to

be retained for a further specified period of time.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in the first proviso of subparagraph (4) above, the Contractor may in fulfillment of its obligation to retain its records as required by this clause substitute photographs, microphotographs or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

In the case of such contracts which do not contain the foregoing alternate subparagraphs (a) (4) and (5), these subparagraphs may be inserted by amendment or, in the alternative, the retention of records may be administered in accordance with the procedures set forth in the foregoing alternate subparagraph (a) (4) of the clause prescribed by paragraph (a) above.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 8—TERMINATION OF CONTRACTS

Subpart A—Definition of Terms

Section 8.101–22 has been revised, as follows:

§ 8.101–22 Special tooling.

"Special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (a) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (b) consumable small tools, or (c) general or special machine tools, or similar capital items.

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

§ 8.208–4 Authorization for Subcontract Settlements of $10,000 or Less without Approval or Ratification.

* * * * *

(b) § 8.513 shall apply to any disposal of completed end items allocable to the terminated subcontract, except that completed end items allocable to the terminated subcontract may be disposed of without review by the contracting officer under §§ 8.513–1 or 8.513–3, and without screening under § 8.513–4, if the total amount thereof (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under paragraph (a) (1) of this section.

Subpart E—Disposition of Termination Inventory

Section 8.507–5 is revised as follows:

§ 8.507–5 Applicability of antitrust laws.

Whenever any termination inventory which has or may cost the Government $3,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interests, the Department concerned shall promptly notify the Attorney General and the Administrator of General Services of the proposed disposal and the probable terms or conditions thereof; and shall await advice from the Attorney General as to whether, so far as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises that the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws, such disposition will not be made.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 9—PATENTS, DATA, AND COPYRIGHTS

Subpart A—Patents

In § 9.110, paragraph (b) has been revised as follows:

§ 9.110 Reporting of royalties.

* * * * *

(b) A reporting of royalties clause is not required to be in contracts where the work is to be performed in the United States, its Territories, its possessions, or Puerto Rico. In all other contracts, regardless of the place of delivery, the clause set forth below shall be included. See § 16.806 for an approved form for optional use by contractors in submitting the required report.

REPORTING OF ROYALTIES (FOREIGN)

If this contract is in an amount which exceeds $50,000, the Contractor shall report in writing to the Contracting Officer during the performance of this contract the amount of royalties paid or to be paid by the Contractor directly to others in the performance of this contract. The Contractor shall also (i) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer and (ii) insert a provision similar to this clause in any subcontract hereunder which involves an amount in excess of the equivalent of fifty thousand United States dollars.

Subpart B—Data and Copyrights

Section 9.203 is revised as follows:

§ 9.203 Contract clauses; general.

In every contract in which data is specified to be delivered, insert the clause of § 9.203–1, except that this clause shall not be used in contracts (a) for the acquisition of existing works, in accordance with § 9.205, (b) wherein the clause of § 9.204 is used in accordance with the provisions of §§ 9.204–2 and 9.204–3, (c) utilizing DD Forms 1261 and 1270 or DD Form 1155, unless the contract is solely for the procurement of data, or (d) to be performed outside the United States, its Territories, or possessions, or Puerto Rico where the clause of § 9.206 applies. The additional sections of §§ 9.203–2, 9.203–3, and 9.203–4 will be added to the clause of § 9.203–1, in accordance with § 9.202 and the instructions contained in §§ 9.203–2, 9.203–3, and 9.203–4.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 13—GOVERNMENT PROPERTY

Subpart A—General

Section 13.101–5 has been revised as follows:

§ 13.101 Definitions.

* * * * *

§ 13.101–5 Special tooling.

"Special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (a) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (b) consumable small tools, or (c) general or special machine tools, or similar capital items.

Subpart C—Special Tooling

Section 13.306 has been revised as follows:

§ 13.306 Fixed-price and cost-reimbursement type—special consideration for tooling with commercial use.

When performance of a fixed-price or cost-reimbursement type contract requires a contractor to acquire tooling which would be special tooling as defined in § 13.101–5, except that it has commercial use, the contract may appropriately provide therefor, giving due consideration to the best interests of the Government and the equities of the contractor.

Subpart F—Use of Government-Owned Industrial Facilities on Work Other Than for a Military Department

In § 13.603, the second item under the column heading "Production equipment Code No." has been corrected to read "3441–34490", from "3411–34490".

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 16—PROCUREMENT FORMS

Subpart A has been revised to reflect DD Form 1260[1] (Amendment to Invita-

[1] Filed as part of the original document.

tion for Bids) and Subpart B to reflect DD Form 1261[1] (General Provisions (Short Form Negotiated Contract)). The coverage provided that DD Forms 351, 351–1 and 351–2 are authorized for use until July 1, 1959, the mandatory effective date of DD Forms 1261 and 1270. The revised portions of these Subparts A and B read as follows:

Subpart A—Forms for Advertised Supply Contracts

§ 16.101 Separate award type (Standard Forms 30, 31, 32, 26 and 36, and DD Form 1260).[1]

§ 16.101–1 General.

Except as provided in § 16.102, the following supply contract forms shall be used in effecting procurements by formal advertising:

(a) Invitation and Bid (Standard Form 30);

(b) Schedule (Standard Form 31);

(c) General Provisions (Supply Contract) (Standard Form 32);

(d) Any other special terms for the invitation for bids or additional contract provisions which are prescribed by this subchapter or Departmental procedures;

(e) Award (Standard Form 26);

(f) Continuation Sheet (Standard Form 36) (when needed with Standard Forms 31 or 26 or DD Form 1260[1]); and

(g) Amendments to Invitation for Bids (DD Form 1260[1]) when needed.

§ 16.101–2 Conditions for use.

(a) The Invitation for Bids (Standard Form 30), and the Schedule (Standard Form 31) shall be prepared in accordance with § 2.201.

(b) Standard Form 32 and any additional general provisions may be attached to each copy of the Invitation for Bids. Alternatively, one copy only of Standard Form 32 and any additional general provisions need be furnished to each bidder, for retention, if such provisions are specifically incorporated by reference, including each form name, number and date, in Standard Form 30 or 31. Provisions which are inapplicable to a particular procurement, or to military procurements generally may be deleted by appropriate reference in an "Alterations in Contract" clause.

(c) Award of contracts shall be accomplished by furnishing a completed Standard Form 26 to each successful bidder. Papers previously forwarded to bidders need not accompany the successful bidder's copy of Standard Form 26. The required use of Standard Form 26 does not preclude the additional use of informal documents, including telegrams, as notices of award.

(d) DD Form 1260[1] (Amendment to Invitation for Bids) shall be used when it is necessary to issue an amendment.

§ 16.102 Combination type (Standard Form 33).

§ 16.102–1 General.

Standard Form 33, which is a combination Invitation for Bids, Bid, Schedule, and Award, may be used to effect procurement by formal advertising, in lieu of Standard Forms 30, 31 and 26, whenever the space available on Standard Form 33 for the Schedule and the Award is sufficient. The following forms are prescribed for use with Standard Form 33:

(a) General Provisions (Supply Contract) (Standard Form 32);

(b) Any other special terms for the invitation for bids or additional contract provisions, which are prescribed by this subchapter or Departmental procedures;

(c) Continuation Sheet (Standard Form 36) (when needed with Standard Form 33 or DD Form 1260[1]); and

(d) Amendment to Invitation for Bids (DD Form 1260), when needed.

§ 16.102–2 Conditions for use.

(a) The Invitation for Bids and Schedule portions of Standard Form 33 shall be prepared in accordance with § 2.201.

(b) Standard Form 32 and any additional general provisions shall be utilized in accordance with the conditions specified in § 16.101–2(b).

(c) Award of contracts shall be accomplished by completing the Award portion of Standard Form 33 and furnishing a copy of the form, so completed, to each successful bidder. The required use of the Award portion of Standard Form 33 does not preclude the additional use of informal documents, including telegrams, as notices of award.

(d) DD Form 1260[1] (Amendment to Invitation for Bids) shall be used when it is necesary to issue an amendment.

Subpart B—Forms for Negotiated Procurement

§ 16.201 Request for quotation (DD Form 747).

§ 16.201–1 General.

DD Form 747 is designed to obtain price, cost, delivery, or other information from suppliers.

§ 16.201–2 Conditions for use.

DD Form 747 is authorized for use when it appears reasonably certain that the procurement will be consummated by (a) a fixed-price type contract involving extensive negotiation or, (b) a cost-reimbursement type contract. Standard Form 36 (Continuation Sheet), or DD Form 1155c (Continuation Sheet) may be used as required. The form is intended primarily for negotiated procurements in excess of $2,500; however, it may be used for negotiated procurements of $2,500 or less (including purchase orders) when written solicitations of quotations are used (see § 3.603 of this subchapter). A quotation submitted on this form is not to be construed as an offer which can be accepted by the Government to form a binding contract. Therefore, issuance by the Government of a purchase order pursuant to a supplier's quotation does not constitute a contract, but the purchase order is an offer by the Government to the supplier to buy certain goods or services upon specified terms and conditions.

§ 16.202 Negotiated contract forms.

§ 16.202–1 DD Forms 1261 and 1270.

(a) *General.* (1) DD Form 1261[1] (Negotiated Contract) is designed for use in entering into negotiated contracts where the signature of both parties on a single document is appropriate.

(2) DD Form 1270[1] (General Provisions (Short Form Negotiated Contract)) is designed for use in DD Form 1261[1] as set forth in paragraph (b) of this section.

(3) DD Form 1261 (Negotiated Contract), in conjunction with appropriate General Provisions (as provided in paragraphs (b), (c), and (d) of this section), is prescribed for use in entering into negotiated contracts except:

(i) Contracts for which DD Forms 746, 746–1, and 746–2 are used in accordance with § 16.203;

(ii) Contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property;

(iii) Procurements for which special contract forms are prescribed by this subchapter (for example, §§ 16.501, 16.503, 16.504, 16.505, and 16.506); and

(iv) Procurements for which purchase order and related forms are authorized by Subpart C of this part.

(b) *Short form negotiated supply contracts.* (1) Except as provided in paragraph (a) (3) of this section, DD Form 1261[1] (Negotiated Contract), DD Form 1270[1] (General Provisions (Short Form Negotiated Contract)), and Standard Form 36 (Continuation Sheet) shall be used for negotiated fixed-price type supply contracts which do not exceed $10,000 and which are for standard or commercial type items not involving special inspection due to complicated specifications.

(2) No clause on DD Form 1270[1] may be deleted or altered, and no other clause covering the subject matter of any clause set forth in this subchapter may be used, except:

(i) Deletions and additions of clauses authorized for use by overseas activities may be made in accordance with Departmental procedures;

(ii) The "Variation in Quantity" clause (§ 7.103–4 of this subchapter) and implementing provisions may be inserted in the Schedule where appropriate;

(iii) The "Preference for Certain Domestic Commodities" clause (§ 6.305) may be inserted in the Schedule, where required by Part 6, Subpart C of this subchapter;

(iv) Where the contract is solely for the procurement of data, one of the clauses set forth in § 9.203 through § 9.206 may be added as required by the instructions in Part 9, Subpart B of this subchapter; and

(v) The "Soviet-Controlled Areas" clause (§ 6.403) shall be inserted in the Schedule where appropriate.

(c) *Long form negotiated supply contracts.* (1) Except as provided in paragraphs (a) (3) and (b) of this section, DD Form 1261[1] (Negotiated Contract) shall be used with Standard Form 32 (General Provisions (Supply Contract)), any other forms containing contract

[1] Filed as part of the original document.

provisions which are prescribed by this subchapter or Departmental procedures, and Standard Form 36 (Continuation Sheet) for entering into negotiated fixed-price type supply contracts to which Part 7, subpart A of this subchapter, is applicable.

(2) Except as provided in paragraph (a)(3) of this section, DD Form 1261 [1] (Negotiated Contract) shall be used with DD Form 748 (General Provisions-Cost-Reimbursement Supply Contracts), any other forms containing contract provisions which are prescribed by this subchapter or Departmental procedures, and Standard Form 36 (Continuation Sheet) for entering into negotiated cost-reimbursement type contracts to which Part 7, subpart B of this subchapter, is applicable.

(d) *Special negotiated contracts.* DD Form 1261 [1] (Negotiated Contracts) may be used for special procurements, where clauses other than those on DD Form 1270,[1] Standard Form 32, or DD Form 748 have been authorized. For example, cost-reimbursement type research and development contracts with clauses prescribed by Part 7, subpart D of this subchapter; contracts for stevedoring services (DD Form 674); time and materials contracts; personal and professional services contracts; and contracts for instruction of military personnel at educational institutions.

(e) *Corporate certificate.* Where a corporate certificate is considered necessary or desirable, it may be executed on a typed sheet, identified by contract number, and attached to DD Form 1261.[1]

(f) *Schedule and continuation sheet.* Standard Form 36 (Continuation Sheet) shall be used for the Schedule and Continuation Sheets; however, where the columns thereon are not required, a blank sheet may be used in lieu thereof, *provided* the contract number, page number, and name of contractor are shown thereon.

§ 16.202–2 DD Forms 351, 351–1, and 351–2.

(a) Notwithstanding § 16.202–1, until 1 July 1959 (the mandatory date for the use of DD Forms 1261 [1] and 1270 [1]), DD Forms 351 (Negotiated Contracts) (Cover Sheet), 351–1 (Schedule) and 351–2 (Certificate) (Signature Page) are authorized for use in entering into negotiated cost reimbursement type and fixed-price type contracts except:

§ 16.203–2 Conditions for use.

(a) DD Forms 746 and 746–1 (together with authorized contract provisions) shall be used in connection with the negotiation of fixed-price contracts for supplies or services (other than personal) when it appears desirable to commence negotiations by soliciting written offers which, upon written acceptance by the Government, would create a binding contract without further action.

(b) When proposals have been submitted on DD Forms 746 and 746–1 and it is in the interest of the Government to accept a prospective contractor's proposal without further negotiation, price and other factors considered, DD Form 746–2 shall be used. In such instances, the contract will consist of the appropriate documents listed in § 16.203–1.

(c) When a proposal submitted by a prospective contractor leads to further negotiation, the resulting contract shall be prepared in accordance with § 16.202, except that: (1) If the circumstances are such that the prospective contractor can amend its proposal in writing to reflect any necessary changes, the amended proposal may be accepted on DD Form 746–2; or (2) if all the terms and conditions agreed to as a result of such further negotiation are specifically and clearly set forth in identifiable writings but such writings are unsuitable or too voluminous to permit acceptance of the amended proposal on DD Form 746–2 and if the circumstances of the procurement require prompt acceptance of the modified proposal, the proposal as thus modified by such further negotiation may be accepted by the issuance of a notice of award in substantially the format set forth below. All of the terms and conditions of the contract thereby created shall be, without change or modification, promptly consolidated into a contract using the forms authorized by § 16.202, and a signed copy thereof shall be submitted to the General Accounting Office.

(Name and Address of Purchasing Office)

Date _____
(Name and Address of Contractor)
Contract No. _____

Gentlemen:

Your proposal dated _____, (in response to Request for Proposals No. _____, dated _____) as amended by [list and identify all documents or portions thereof, such as letters, telegrams, and printed matter, from the prospective contractor and the Government, which together set forth the terms and conditions of the contract] for the furnishing of _____, at a total price of $_____, is accepted and award is hereby made.

A contract in the usual form, dated and numbered as set forth above, incorporating all the terms and conditions of the contract hereby created is being prepared and will be forwarded to you in the near future.

This contract is authorized by and has been negotiated pursuant to 10 U.S.C. 2304 (a)( ).

UNITED STATES OF AMERICA
By _____
(Name) Contracting Officer

(d) Standard Form 32, if applicable, and any other general provisions may be attached to each copy of the Request for Proposals. Alternatively, one copy only of Standard Form 32 and any other general provisions need be furnished to each supplier, for retention, if such provisions are specifically incorporated by reference, including each form name, number and date, in DD Form 746–1. Provisions which are inapplicable to a particular procurement, or to military procurements generally, may be deleted by appropriate reference in an "Alterations in Contract" clause.

(e) When a cost breakdown is required in connection with a proposal, DD Form 633 shall be used to the extent provided in § 16.206.

(f) This section does not preclude the use of the purchase order forms prescribed in Part 16, Subpart C of this subchapter.

(g) When it is necessary to issue an amendment to a request for proposals, DD Form 746s (Amendment to Request for Proposals) shall be used.

Subpart E—Special Contract and Order Forms

1. Section 16.502–1 has been revised as follows:

§ 16.502–1 General.

DD Form 674 is a Schedule prescribed for use in the procurement of stevedoring services within the United States. In negotiated contracts for stevedoring services, DD Form 674 (Schedule Page) shall be used in conjunction with the appropriate forms described in § 16.202. When contracting for stevedoring services outside the United States, the provisions of the Schedule will be used as a guide only.

2. Section 16.503–6(a) has been revised to reflect the recent up-dating of certain provisions of DD Form 731 and to provide for a periodic review of the form, as appropriate, rather than the mandatory annual review which has been the requirement in the past. Section 16.503–6(a), as revised, reads as follows:

§ 16.503–6 Modification of master contracts.

(a) Since master contracts prescribe the terms and conditions under which contractors submit bids and competitive quotations for vessel repair work, it is essential that the provisions of all outstanding master contracts be kept uniform. It is also necessary that master contracts be kept up to date and reflect changes in statutes, executive orders, and procurement regulations applicable to vessel repair work. The DD Form 731 will be revised periodically, not more frequently than annually, to incorporate all changes made necessary by this subchapter revisions unless revision is required by statute or executive order. All outstanding master contracts shall be replaced using the latest revised form, effective as to all job orders issued on or after 60 days after the promulgation of such revision.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

§ 30.2 *Appendix B—Manual for control of Government property in possession of contractors,* 103.14 is revised as follows:

103.14 Special tooling means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is

[1] Filed as part of the original document.

limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (i) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (ii) consumable small tools, or (iii) general or special machine tools, or similar capital items.

2. To consolidate the administration of Government property in the possession of contractors, revisions of Appendixes B–202 and C–202 prescribe a single property administrator for all DoD contracts performed by a contractor at one location. Instructions for interchange of property administration and designation of property administrators will be furnished procuring activities by the Military Departments.

PART II—GENERAL PROVISIONS

202. *Designation of property administrator.* (a) A property administrator shall be designated for each Government contract involving Government property. In appropriate cases the contract administrator may be assigned the additional duty of property administrator. An assistant property administrator may be appointed for specific contracts. The property administrator will not be required to post a bond by virtue of the duty as property administrator.

(b) It is the policy of the Department of Defense that a single property administrator shall be designated for all Department of Defense contracts performed at one location by a contractor. The procuring activities concerned shall designate the property administrator by agreement as soon as administratively feasible.

§ 30.3 Appendix C—Manual for control of Government property in possession of nonprofit research and development contractors.

PART I—INTRODUCTION

(e) Special tooling means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (i) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (ii) consumable small tools, or (iii) general or special machine tools, or similar capital items.

PART II—GOVERNMENT ADMINISTRATIVE PROVISIONS

202. *Designation of property administrator.* (a) A property administrator shall be designated for each Government contract involving Government property. In appropriate cases the contract administrator may be assigned the additional duty of property administrator. An assistant property administrator may be appointed for specific contracts. The property administrator will not be required to post a bond by virtue of the duty as property administrator.

(b) It is the policy of the Department of Defense that a single property administrator shall be designated for all Department of Defense contracts performed at one location by a contractor. The procuring activities concerned shall designate the property administrator by agreement as soon as administratively feasible.

G. C. BANNERMAN,
Director for Procurement Policy, Office of Assistant Secretary of Defense (Supply and Logistics).

[F.R. Doc. 59-3776; Filed, May 4, 1959; 8:48 a.m.]

Chapter XII—National Aeronautics and Space Administration

CROSS REFERENCE: For transfer of this chapter to Title 14 see Editorial Note to Title 14 in this issue.

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

PART 8—NATIONAL SERVICE LIFE INSURANCE

Policy Loans

1. Section 6.100 is revised to read as follows:

§ 6.100 Policy loan; other than 5-year convertible term policy.

At any time after the premiums for the first policy year have been paid and earned and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the sole security of his United States Government life insurance policy any amount which shall not exceed 94 percent of the cash value, and any indebtedness shall be deducted from the amount advanced on such loan. The loan shall bear interest at a rate not to exceed 6 percent per annum, payable annually, and, at any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not avoid the policy unless the total indebtedness shall equal or exceed the cash value thereof. When the amount of the indebtedness equals or exceeds the cash value, the policy shall cease and become void.

2. Section 8.28(a) is amended to read as follows:

§ 8.28 Policy loan; other than 5-year level premium term and limited convertible 5-year level premium term policies.

(a) At any time after the premiums for the first policy year have been paid and earned and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the security of his National Service life insurance policy, on any plan other than 5-year level premium term or limited convertible 5-year level premium term, any amount which will not exceed 94 percent of the reserve, and any indebtedness on the policy shall be deducted from the amount advanced on such loan. Except as prescribed in paragraph (b) of this section, the loan shall bear interest at the rate of 5 per centum per annum, payable annually; and, at any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not void the policy unless the total indebtedness shall equal or exceed the cash value thereof. When the amount of the indebtedness equals or exceeds the cash value, the policy shall cease and become void.

(72 Stat. 1114; 38 U.S.C. 210)

These regulations are effective May 5, 1959.

[SEAL] ROBERT J. LAMPHERE,
Associate Deputy Administrator.

[F.R. Doc. 59-3771; Filed, May 4, 1959; 8:47 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 201—PROCEDURES OF THE POST OFFICE DEPARTMENT

PART 204—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE DENIAL, SUSPENSION OR ANNULMENT OF SECOND-CLASS MAIL PRIVILEGES

Miscellaneous Amendments

Because of the procedural nature of these rules, the Post Office Department has found that general notice of proposed rule making and public procedure thereon are unnecessary, and that good cause exists why these rules should be made effective without a period of prior notice.

The Department will continue to study the problems involved in the rules with respect to second-class privileges with a view to making such further changes as may from time to time appear to be desirable. Members of the bar, publishers, and others are invited to submit any further comments and suggestions they may have to the Department.

The following rules in new Part 204 supersede the rules of procedure in § 201.40, and are made effective as to all proceedings, pending or filed, upon publication in the FEDERAL REGISTER.

1. Subpart B of Part 201, and § 201.40, *Procedures governing administrative hearing relative to the denial, suspension or annulment of second-class mail privileges,* are rescinded.

2. A new Part 204 is added to read as follows:

Sec.
204.1 Scope of rules.
204.2 Informal dispositions.
204.3 Office, business hours.

AUTHORITY: §§ 204.1 to 204.23 issued under R.S. 161, as amended, 396, as amended, secs. 304, 309, 42 Stat. 24, 25; 5 U.S.C. 22, 369.

§ 204.1 Scope of rules.

The Rules of practice shall apply to all Post Office Department proceedings concerning applications, denials, suspensions and revocations of second-class permits arising under 39 U.S. Code 224, 226, 227, 229, 230, 232 and 233.

§ 204.2 Informal dispositions.

These rules do not preclude the informal disposition of second class permit matters before or after institution of proceedings.

§ 204.3 Office, business hours.

The offices of the officials mentioned in these rules are located at the Post Office Department, 12th and Pennsylvania Avenue NW., Washington 25, D.C., and are open Monday through Friday from 8:45 a.m. to 5:15 p.m.

§ 204.4 Application.

A publisher may file an application for entry of a publication as second class mail (Part 22 of this chapter). The Director, Postal Services Division, Bureau of Operations, Post Office Department, rules upon all applications. If he denies the application he shall notify the publisher specifying the reasons for his denial and attaching a copy of these rules. Before taking action on an application, the Director may call upon the publisher for additional information or evidence to support or clarify the application. Failure of the publisher to furnish such information or evidence may be cause for the Director to deny the application as incomplete or, on its face, not fulfilling the requirements for entry.

§ 204.5 Revocation.

When the Director determines that a publication is no longer entitled to the permit, he may issue a ruling of suspension or revocation to the publisher at the last known address of the office of publication stating the reasons and attaching a copy of these rules.

§ 204.6 Failure to appeal proposed action.

A ruling of the Director shall become final upon failure of the publisher to file a petition in accordance with the requirements of § 204.7.

§ 204.7 Pleading.

(a) *Place of filing.* Parties shall file documents of record in triplicate, unless otherwise ordered by the presiding officer after intervention pursuant to § 204.9 with the Docket Clerk of the Post Office Department, who shall cause copies to be delivered to the other parties and to the presiding officer. The Docket Clerk shall maintain a docket and the files in all proceedings.

(b) *Petition.* A publisher may appeal from a ruling of the Director by filing a petition within 15 days of the receipt of the ruling unless extended by the Director. The petition shall state the reasons the publisher believes the ruling of the Director is erroneous and shall affirmatively show compliance with each provision of law or regulation on which the ruling was based.

(c) *Notice of hearing.* Upon receipt of the petition the Docket Clerk shall set a date for the hearing and issue a notice of hearing to the parties stating the time and place of the hearing, the date for filing an answer, and the name of the presiding officer assigned pursuant to § 204.13.

(d) *Answer.* The Director shall answer the petition within 15 days after filing and admit or deny each allegation of the petition.

(e) *Amendment.* An amendment of a pleading may be offered by any party at any time prior to the close of the hearing.

§ 204.8 Default.

If the publisher fails to appear at the hearing the presiding officer shall receive the evidence of the Director and render an initial decision (§ 204.18) from which either party may appeal (§ 204.19).

§ 204.9 Intervention.

To intervene a person not a party to the proceeding shall file an application in writing not less than three days before the time fixed for hearing. The application shall state whom the potential intervenor represents, his interest, the extent to which he desires to participate, and the evidence he seeks to introduce. The presiding officer shall grant an application to intervene upon a proper showing of interest. Participation of an intervenor shall be limited to the filing of a brief before the presiding officer.

§ 204.10 Hearings.

Hearings are held in Room 5241, Post Office Department, Washington 25, D.C., or other locations designated by the presiding officer.

§ 204.11 Change of place of hearing.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Washington, D.C. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

§ 204.12 Appearances.

(a) The General Counsel of the Post Office Department or a member of his staff designated by him shall represent the Director.

(b) A publisher or intervenor may appear and be heard in person or by attorney. Attorneys may practice before the Department in accordance with §§ 202.1–6 of this chapter.

(c) An attorney representing a publisher or intervenor shall file a written authorization from the publisher or intervenor before he may participate in the proceeding. The publisher or intervenor must promptly file a notice of change of attorneys.

(d) When a publisher or intervenor is represented by an authorized attorney all subsequent pleadings shall be served upon the attorney.

§ 204.13 Presiding officers.

(a) The Docket Clerk shall assign a case to a hearing examiner, so far as practical upon rotation, to preside over the hearing. The hearing examiner shall be qualified pursuant to the Administrative Procedure Act (5 U.S.C. 1010).

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon matters of evidence and procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs on any matter upon which he is required to rule;

(7) Order pre-hearing conferences for the settlement or simplification of issues by consent of the parties;

(8) Order the proceeding re-opened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision.

§ 204.14 Judicial Officer.

The Judicial Officer is authorized to render a final departmental decision for the Postmaster General. He will consider the entire record including the initial decision and the exceptions to that decision. Before any final agency decision has been rendered, he may order the hearing reopened for the hearing examiner to take additional evidence.

§ 204.15 Procedure.

(a) *Evidence.* The general rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States apply. The rules may be relaxed to the extent that the presiding officer may deem proper to insure an adequate and fair hearing. The presiding officer may exclude irrelevant or repetitious evidence.

(b) *Subpoenas.* The Post Office Department is not authorized to issue subpoenas.

(c) *Depositions.* Depositions may be taken in accordance with 39 CFR, § 201.24.

(d) *Fees.* The Post Office Department does not pay fees and expenses for witnesses or depositions of the publisher or intervenor.

§ 204.16 Transcript.

(a) A contract reporter of the Post Office Department under the supervision of the presiding officer shall report hearings. The reporter shall supply the parties with copies of the transcript at rates not to exceed those fixed by contract between the Department and the reporter.

(b) Changes in the official transcript may be made only when they involve substantial errors. A party may file a motion for correction of the official transcript within 10 days after his receipt of the transcript or any part thereof. Other parties shall notify the presiding officer in writing if they concur with the requested corrections. The presiding officer shall then specify the corrections to be made in the transcript. He may on his own initiative order corrections in the transcript after notice to the parties subject to their objection.

§ 204.17 Proposed findings and conclusions.

(a) A party to a proceeding may submit proposed findings of fact and conclusions of law to the presiding officer. The presiding officer shall determine whether they shall be oral or written. The presiding officer may require parties to a proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. When the proposed findings are not submitted orally they shall be filed within 15 days after delivery of the official transcript to the Docket Clerk. The Docket Clerk shall notify the parties of the filing date which shall be the same for both parties. If not submitted by that date, the findings will not be considered or included in the record.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in numbered paragraphs and shall state with particularly all evidentiary facts in the record with appropriate citations to the transcript or exhibits relied upon to support the conclusions proposed. Each proposed conclusion shall be separately stated.

§ 204.18 Initial decision.

(a) Upon request of either party the presiding officer may render an oral initial decision at the close of the hearing when the nature of the case and the public interest warrant. If a party desires an oral initial decision he shall notify the presiding officer and the opposing party at least 5 days prior to the date set for hearing. Parties may then submit proposed findings orally or in writing at the conclusion of the hearing.

(b) If an oral initial decision is not rendered, the presiding officer shall render a written initial decision at the earliest possible date. The initial decision shall become the final departmental decision unless it is appealed.

(c) The initial decision shall include findings upon all material issues of fact and law presented on the record and the reasons for those findings.

§ 204.19 Appeal and final decision.

(a) A party may appeal to the Judicial Officer from an initial decision by filing exceptions in a brief on appeal within 15 days from the receipt or oral rendition of the initial decision.

(b) Upon receipt of the appeal brief the Judicial Officer shall set the date for the filing of the reply brief. No additional briefs shall be received unless requested by the Judicial Officer.

(c) Appeal briefs shall contain the following matter in the order indicated:

(1) A subject index of the matters presented with page references;

(2) A table of cases alphabetically arranged;

(3) A list of statutes and texts cited with page references;

(4) A concise abstract or statement of the case;

(5) Numbered exceptions to the findings and conclusions of the presiding officer and the reasons for the exceptions.

§ 204.20 Continuances.

Continuances or extensions may be granted for substantial cause shown by the presiding officer or by the Judicial Officer when the proceeding is on appeal.

§ 204.21 Computation of time.

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday or holiday, in which event the period runs until the close of business on the next working day.

§ 204.22 Official record.

The pleadings, orders, exhibits, transcript of testimony, briefs, decisions and other documents filed in the proceeding constitute the official record of the proceeding.

§ 204.23 Public information.

The Law Librarian of the Post Office Department maintains for public inspection in the Law Library copies of all initial and departmental decisions. The Docket Clerk of the Post Office Department maintains a complete official record of every proceeding. A person may examine a record upon authorization by the Judicial Officer.

[SEAL] CHARLES D. ABLARD,
Judicial Officer for the Post Office Department.

[F.R. Doc. 59-3839; Filed, May 4, 1959; 10:37 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

[Docket No. 3666; Order 38]

PARTS 71–78—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

Miscellaneous Amendments

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 21st day of April 1959.

The matter of revision of certain regulations governing the transportation of explosives and other dangerous articles, formulated and published by the Commission, being under consideration, and

It appearing that Notice No. 38, dated March 2, 1959, setting forth certain proposed amendments to the said regulations, and the reasons therefor, and stating that consideration was to be given thereto, was published in the FEDERAL REGISTER on March 19, 1959 (24 F.R. 2071), pursuant to the provisions of section 4 of the Administrative Procedure Act; that pursuant to said notice interested parties were given an opportunity to be heard with respect to said proposed amendments; that written views or arguments were submitted to the Commission with respect to the proposed amendments;

And it further appearing that said views and arguments with respect to the proposed amendments are such as to warrant revision at this time of certain of the proposed amendments, and that in all other respects the proposed amendments set forth in the above referred-to Notice No. 38 are deemed justified and necessary:

It is ordered, That the aforesaid regulations governing the transportation of explosives and other dangerous articles be, and they are hereby, amended in the manner and to the extent set forth in said Notice No. 38, dated March 2, 1959, as revised by the specific deletions and modifications set forth as follows:

1. In § 72.5 commodity list, delete the entries, "Rocket Motors", *"Rocket motors, class A explosives. See* Jet thrust unit *(jato)*, class A explosives, or Rocket ammunition.", and *"Rocket motors, Class B explosives. See* Jet thrust unit *(jato)*, class B explosives, or Rocket ammunition".

2. The proposed addition of paragraph (g) to § 73.22 is revised to include the order date.

3. In § 73.31(g)(9) table 1, amend the entry "ICC–111A100–W–6" only to the extent of changing the numbers in the 12th, 13th, and 14th columns now reading, "60", "35", and "28", respectively, to read, "100", "75", and "60", respectively.

4. In § 73.32 amend paragraph (a)(2).

5. In § 73.33 amend paragraph (a)(1).

6. Delete the entire proposed amendment to § 73.53 which is paragraph (t).

7. Delete the entire proposed amendment to § 73.88 which is paragraph (e).

8. In the amendatory text to § 73.206, change the date "Nov. 21, 1956" to read "Nov. 21, 1951".

9. Delete the entire proposed addition of § 73.236.

10. In Part 78, delete Subpart J heading.

11. Delete the entire proposed amendment to § 78.321–18 which is paragraph (b) (1).

12. Delete the entire proposed amendment to § 78.322–18 which is paragraph (b) (1).

13. Delete the entire proposed amendment to § 78.323–18 which is paragraph (b) (1).

14. Delete the entire proposed amendment to § 78.324–17 which is paragraph (b) (1).

15. Delete the entire proposed amendment to § 78.325–9 which is paragraph (b).

16. Delete the entire proposed amendment to § 78.326–14 which is paragraph (b).

It is further ordered, That this order shall become effective July 19, 1959, and shall remain in effect until further order of the Commission;

It is further ordered, That compliance with the herein prescribed and amended regulations is hereby authorized on and after the date of service of this order;

And it is further ordered, That copies of this order be served upon all parties of record herein, and that notice shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy thereof with the Director, Federal Register Division.

(62 Stat. 738, 18 U.S.C. 831–835; 49 Stat. 546, 52 Stat. 1237, 54 Stat. 921, 49 U.S.C. 304)

By the Commission, Division 3.

[SEAL] HAROLD D. McCOY, *Secretary.*

PART 72—COMMODITY LIST OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 71–78 OF THIS CHAPTER

Amend § 72.5 commodity list (15 F.R. 8263, 8266, 8269, 8272, Dec. 2, 1950) as follows:

§ 72.5 List of explosives and other dangerous articles.

(a) * * *

Article	Classed as	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in 1 outside container by rail express
Change				
*Acetone oils	F.L.	73.118, 73.119	Red	10 gallons.
Spirits of nitroglycerin	F.L.	73.118(e), 73.133	Red	6 quarts.
Add				
Cyanogen bromide	Pois. B	No exemption, 73.379	Poison	25 pounds.
Mild detonating fuse, metal clad	Expl. C	No exemption, 73.104		300 pounds.

PART 73—SHIPPERS

Subpart A—Preparation of Articles for Transportation by Carriers by Rail Freight, Rail Express, Highway, or Water

In § 73.22 add paragraph (g) (15 F.R. 8277, Dec. 2, 1950) to read as follows:

§ 73.22 Specification containers prescribed.

* * * * *

(g) Spec. 2S (§ 78.35 of this chapter) polyethylene drums manufactured prior to July 19, 1959 may be continued in service provided they are in satisfactory condition for service or until further order of the Commission.

In § 73.28 amend paragraph (h) (15 F.R. 8277, Dec. 2, 1950) to read as follows:

§ 73.28 Reused containers.

* * * * *

(h) Single-trip containers made under specifications prescribed in Part 78 of this chapter from which contents have once been removed following use for shipment of any article, must not be again used as shipping containers for explosives, flammable liquids, flammable solids, oxidizing materials, corrosive liquids, or poisons, class B or C, as defined in this part: *Provided,* That during the present emergency and until further order of the Commission, single-trip containers may be reused if retested in accordance with methods approved by the Bureau of Explosives before each reuse and approved for service for specific commodities or classes of commodities. Applications for permission for reuse should be made to the Bureau of Explosives, 30 Vesey Street, New York 7, New York.

In § 73.31 amend paragraph (a) table and cancel footnote 8 thereto; amend paragraph (g) (9) table 1 and amend footnotes "h" and "i" and add footnote "j" thereto (22 F.R. 11030, Dec. 31, 1957) (21 F.R. 4562, June 26, 1956) (22 F.R. 4789, July 9, 1957) (23 F.R. 7646, Oct. 3, 1958) (24 F.R. 903, Feb. 6, 1959) to read as follows:

§ 73.31 Qualification, maintenance, and use of tank cars.

(a) * * *

Where these regulations call for specification numbers—	These specification containers may also be used subject to the provisions of the following notes—
(*Change*)	
103C-W[11]	103C.[11]

* * * * *

(g) * * *

(9) * * *

TABLE 1—RETEST PERIODS AND PRESSURES

Classification	See footnote	Tank retests [b, i]				Safety valve retest years	Interior heater systems retest				Tank test psi.	Safety valve psi.[e]	Safety valve vapor tight psi. minimum	Retest holding time-minutes	Test time when lagging is not removed-minutes
		Up to 10 years	10–22 years	Over 10 years	Over 22 years		Up to 10 years	10–22 years	Over 10 years	Over 22 years					
(*Change*)															
ICC-105A100-W		10		10		5					100	75	60	10	20
ICC-105A300-W	a, j	10		10		5					300	225	180	30	30
ICC-105A100AL-W		10		10		5					100	75	60	10	20
ICC-109A100AL-W		10		10		5					100	75	60	10	20
ICC-111A100-W-1		10		10		10	10		10		100	*75	60	10	20
ICC-111A100-W-3		10		10		10	10		10		100	*75	60	10	20
ICC-111A100-W-4		10		10		5	10		10		100	*75	60	10	20
EMERG.USG-A, B & C		10		10							60	*25		10	20
(*Add*)															
ICC-111A60AL-W		10		10		10	10		10		60	*35	28	10	20
ICC-111A100-W-6	e, d	5	3		1	(c)	5	3		1	100	75	60	10	20

* * * * * * * * *

[b] Nickel clad tanks used in bromine service and lead lined tanks need not be retested as prescribed in the table. Safety valves must be retested as prescribed herein.
[i] Glass or rubber-lined tanks are not subject to periodic retests. Safety valves must be retested as prescribed herein.
[j] Safety valves of tanks in bromine service must be retested every two years.

In § 73.32 amend paragraph (a) (2) (15 F.R. 8279, Dec. 2, 1950) to read as follows:

§ 73.32 Qualification, maintenance, and use of portable tanks.

(a) * * *

(2) Portable tank containers for transportation as cargo on vessels in commerce subject to the jurisdiction of the United States Coast Guard shall not exceed a loaded weight of 8,000 pounds. Nothing contained in this section shall be so construed as to pertain to transportation on car floats and car ferries, nor shall such limitation in weight apply to trailerships or containerships if approved under Coast Guard Regulations.

In § 73.33 amend paragraph (a) (1) (15 F.R. 8280, Dec 2, 1950) to read as follows:

§ 73.33 Qualification, maintenance, and use of cargo tanks.

(a) * * * .

(1) Cargo tank containers for transportation as cargo on vessels in commerce subject to the jurisdiction of the United States Coast Guard shall not exceed a loaded weight of 8,000 pounds. Nothing contained in this section shall be so construed as to pertain to transportation on car floats and car ferries, nor shall such limitation in weight apply to trailerships or containerships if approved under Coast Guard Regulations.

Subpart B—Explosives; Definitions and Preparation

In § 73.53 amend the introductory text of paragraph (t) (21 F.R. 3008, 3009, May 5, 1956) to read as follows:

In § 73.63 amend paragraph (c) (1) (iii) (24 F.R. 903, Feb. 6, 1959) to read as follows:

§ 73.63 High explosives with liquid explosive ingredient.

* * * * *

(c) * * *

(1) * * *

(iii) Two or more cartridges that must be redipped becauses of their size may be enclosed in another strong paper shell to form a completed cartridge not exceeding 30 inches in length. The resulting cartridge must be dipped in melted paraffin or equivalent material.

In § 73.86 amend paragraph (a) (18 F.R. 3134, June 2, 1953) to read as follows:

§ 73.86 Samples of explosives and explosive articles.

(a) New explosives, including fireworks and explosive devices, other than Army, Navy, or Air Force explosive or chemical ammunition of a security classification, must be examined and approved by the Bureau of Explosives as safe for transportation before being offered for shipment, except that a sample of such explosives, fireworks, and explosive devices, not to exceed 5 pounds net weight, may be offered for transportation by carriers by rail freight, highway, or water for this examination. Samples of explosives, except liquid nitroglycerin, other than new explosives for laboratory examination not exceeding 5 pounds net weight, may be offered for transportation by carriers by rail freight, highway, or water. For the purpose of Parts 71–78 of this chapter, a new explosive, including fireworks and explosive devices, is the product of a new factory or an explosive or explosive device of an essentially new composition or character made by any factory.

In § 73.100 add paragraph (cc) (15 F.R. 8296, Dec. 2, 1950) to read as follows:

§ 73.100 Definition of class C explosives.

* * * * *

(cc) Mild detonating fuse, metal clad, consists of a core containing not more than 2½ grains of high explosive composition per lineal foot, clad with metal either with or without a covering of tapes, yarns, plastics, or waterproofing compounds.

In § 73.101 amend paragraph (a) (22 F.R. 7835, Oct. 3, 1957) to read as follows:

§ 73.101 Small-arms ammunition.

(a) Small-arms ammunition must be packed in pasteboard or other inside boxes, or in partitions designed to fit snugly in the outside container, or must be packed in metal clips. The partitions and metal clips must be so designed as to protect the primers from accidental injury. The inside boxes, partitions and metal clips must be packed in securely closed strong outside wooden or fiberboard boxes or metal containers.

Amend entire § 73.104 (15 F.R. 8296, Dec. 2, 1950) to read as follows:

§ 73.104 Cordeau detonant fuse or mild detonating fuse, metal clad.

(a) Cordeau detonant fuse or mild detonating fuse, metal clad must not be packed in the same package with detonators or with any high explosive.

(b) Cordeau detonant fuse or mild detonating fuse, metal clad must be packed in wooden boxes or fiberboard boxes.

(c) Each outside container must be plainly marked "Cordeau Detonant Fuse—Handle Carefully" or "Mild Detonating Fuse, Metal Clad—Handle Carefully," as the case may be.

Subpart C—Flammable Liquids; Definition and Preparation

In § 73.119 amend paragraphs (a) (12) and (17), (e) (2) and (3), and (f) (4); add paragraph (a) (13) and (18) (22 F.R. 4789, July 9, 1957) (21 F.R. 671, Jan. 31, 1956) (16 F.R. 5323, June 6, 1951) (21 F.R. 4564, June 26, 1956) to read as follows:

§ 73.119 Flammable liquids not specifically provided for.

(a) * * *

(12) Spec. 103, 103–W, 103AL–W, 103D–W, 104, 104–W, 105A100, 105A100–W, 105A100AL–W, 105A200–W, 105A200–AL–W, 105A300–W, 105A300AL–W, 105A400–W, 105A500–W, 105A600–W, 111A60AL–W, 111A100–W–1, 111A100–W–3, 111A100–W–4, 111A100–W–6, ARA–II,[2] ARA–III,[2] ARA–IV,[2] or ARA–IV–A[2] (§§ 78.265, 78.280, 78.291, 78.297, 78.269, 78.284, 78.270, 78.285, 78.294, 78.307, 78.308, 78.286, 78.300, 78.287, 78.288, 78.289, 78.310, 78.303, 78.305, 78.306, 78.311 of this chapter). Tank cars. For cars equipped with expansion domes, manhole closures must be so designed that pressure will be released automatically by starting the operation of removing the manhole cover. (See § 73.432 for shipping instructions.)

(13) The use of spec. 103AL special riveted aluminum tank cars is authorized for the transportation of gasoline, ethyl acetate, acetone, methanol, or butyraldehyde as provided in special orders of November 5, 1937 and February 1, 1939.

* * * * *

(17) Spec. MC 300, MC 301, MC 302, MC 303, MC 304 or MC 305 (§§ 78.321, 78.322, 78.323, 78.324, 78.325, or 78.326 of this chapter). Tank motor vehicles.

[Note 1 remains the same.]

(18) The use of existing tank cars constructed to specifications Emergency USG–A,[1] USG–B,[1] or USG–C[1] in effect prior to June 4, 1956 is authorized for the transportation of liquids weighing not over 8 pounds per gallon, and having vapor pressures not exceeding 16 pounds per square inch, absolute, at 100° F.

* * * * * *

(e) * * *

(2) Spec. 103, 103–W, 103AL–W, 103D–W, 104, 104–W, 105A100, 105A100–W, 105A100AL–W, 105A200–W, 105A200AL–W, 105A300–W, 105A300AL–W, 105A400–W, 105A500–W, 105A600–W, 111A60AL–W, 111A100–W–1, 111A100–W–3, 111A100–W–4, 111A100–W–6, ARA–II,[2] ARA–III,[2] ARA–IV,[2] or ARA–IV–A[2] (§§ 78.265, 78.280, 78.291, 78.297, 78.269, 78.284, 78.270, 78.285, 78.294, 78.307, 78.308, 78.286, 78.300, 78.287, 78.288, 78.289, 78.310, 78.303, 78.305, 78.306, and 78.311 of this chapter). Tank cars. Cars having expansion domes must be equipped with manhole closures, identification marks, and dome placards as prescribed in (f) (4), (g), (h), and (h) (1) of this section. (See Note 1 of paragraph (f) (3) of this section.)

(3) Spec. MC 300, MC 301, MC 302, MC 303, MC 304, or MC 305 (§§ 78.321, 78.322, 78.323, 78.324, 78.325, or § 78.326 of this chapter). Tank motor vehicles.

(f) * * *

(4) Spec. 103, 103–W, 103AL–W, 104, 104–W, 111A60AL–W, ARA–II,[1] ARA–III,[1] or ARA–IV[1] (§§ 78.265, 78.280, 78.291, 78.269, 78.284, 78.310 of this chapter). Tank cars. Cars must have their manhole closures equipped with approved safeguards making removal of closures from manhole openings practically impossible while car interior is subjected to vapor pressure of lading. These cars must be stenciled on each side of domes in line with the ladders, and in a color contrasting to the color of the dome, with the identification mark as prescribed in paragraph (g) of this section.

[1] The use of existing tank cars authorized, but new construction not authorized.

Subpart D—Flammable Solids and Oxidizing Materials; Definition and Preparation

In § 73.162 amend paragraph (a) (5) (15 F.R. 8304, Dec. 2, 1950) to read as follows:

§ 73.162 Charcoal.

(a) * * *

(5) Charcoal made from walnut shells, corn cobs, peach pits, and similar material, must be cooled and held not less than five days before shipment, and shipped in bags, barrels, or boxes. The five-day holding period shall not apply to charcoal briquettes screened and cooled to a temperature below 100° F. before being offered for transportation.

In § 73.176 amend paragraph (c) (1), (2), and (3) (15 F.R. 8306, Dec. 2, 1950) to read as follows:

§ 73.176 Matches.

* * * * *

(c) * * *

(1) Matches, strike-anywhere, must be placed in individual containers consisting of an outer sliding shuck or cover and an inner holding tray or box, or securely closed chipboard or fiberboard boxes. Individual containers consisting of a holding tray or box with a top that telescopes over the box may be used. Boxes of suitable "hang-up" type may also be used if approved by the Bureau of Explosives. All match boxes, covers, and trays must be made of cardboard, wood, or metal, except that paper wrappings may be used for block or card matches.

(2) Individual containers must be wrapped in paper, except as provided herein, with not more than 12 boxes or individual containers in each paper-wrapped package. These packages must be secured on the ends and on the lapping side with glue, or similar satisfactory adhesive, making each 12 boxes or less of matches a serviceably wrapped and well-secured package. Chipboard or fiberboard boxes constructed of material not less than 0.018 inch thick, having flaps secured by adhesive or closed by specially designed flaps or tabs formed to secure tight closures, are not required to be wrapped in paper.

(3) No individual container (not including card or block matches) shall contain more than 700 strike-anywhere matches in any one container, box, or package. When more than 300 matches are packed in any individual container, box, or package, the matches must be arranged in two nearly equal portions with the heads of the two portions placed in opposite directions. All individual containers containing 350 or more matches must have placed over the matches a center holding or protecting strip made of cardboard, which can be scored or bent without fracture, except the center holding strip shall not be required when matches are packed in chipboard or fiberboard boxes detailed in subparagraph (2) of this paragraph. This protecting strip shall be not less than 1¼ inches wide and shall be flanged down at least ⅝ inch on each end to hold the matches in position when the container is nested into the shuck or cover or withdrawn therefrom.

In § 73.206 amend paragraph (e) (1) (16 F.R. 11778, Nov. 21, 1951) to read as follows:

§ 73.206 Sodium or potassium, metallic, sodium amide, sodium potassium alloys, lithium metal, lithium silicon, lithium hydride, and lithium aluminum hydride.

* * * * *

(e) * * *

(1) Spec. 15A or 15B (§ 78.168 or § 78.169 of this chapter). Wooden boxes, not over 75 pounds gross weight, with air-tight inside copper cartridges. Cartridges having less than 0.022 inch wall thickness must be separated or securely cushioned in the boxes. Each cartridge must have a minimum thickness of 0.02 inch.

In § 73.224 amend paragraph (a) (3) (24 F.R. 904, Feb. 6, 1959) to read as follows:

§ 73.224 Cumene hydroperoxide, dicumyl peroxide, paramenthane hydroperoxide, and tertiary butylisopropyl benzene hydroperoxide.

(a) * * *

(3) Spec. 103, 103–W, 103A, 103A–W, 111A100–W–1, or 111A100–W–2 (§§ 78.265, 78.280, 78.266, 78.281, 78.303, or § 78.304 of this chapter). Tank cars. Authorized for 90 percent or less cumene hydroperoxide in a nonvolatile solvent and paramenthane hydroperoxide of strength not exceeding 60 percent in a nonvolatile solvent only. Spec. 103, 103–W, and 111A100–W–1 (§§ 78.265, 78.280, and 78.303 of this chapter) tank cars must have bottom outlets effectively sealed from the inside.

* * * * *

Subpart E—Acids and Other Corrosive Liquids; Definition and Preparation

In § 73.245 amend paragraph (a) (18) (23 F.R. 7648, Oct. 3, 1958) to read as follows:

§ 73.245 Acids or other corrosive liquids not specifically provided for.

(a) * * *

(18) Spec. 12A (§ 78.210 of this chapter). Fiberboard boxes with inside glass, polyethylene, or other non-fragile plastic bottles not over 1-gallon capacity each. Not more than 4 inside glass bottles exceeding 5 pints capacity each shall be packed in the outside container. Shipper must have established that the completed package meets test requirements prescribed by § 78.210–10 of this chapter.

In § 73.247 add paragraph (a) (16) (23 F.R. 2325, Apr. 10, 1958) to read as follows:

§ 73.247 Acetyl chloride, antimony pentachloride, benzoyl chloride, chromyl chloride, pyro sulfuryl chloride, silicon chloride, sulfur chloride (mono and di), sulfuryl chloride, thionyl chloride, tin tetrachloride (anhydrous), and titanium tetrachloride.

(a) * * *

(16) Spec. 106A500, 106A500X, or 110A500–W (§ 78.275 or § 78.293 of this chapter). Tank cars. Authorized for antimony pentachloride only.

In § 73.249 add paragraph (b) (4) (18 F.R. 803, Feb. 7, 1953) to read as follows:

§ 73.249 Alkaline corrosive liquids, n.o.s., alkaline caustic liquids, n.o.s., alkaline battery fluids, and sodium aluminate, liquid.

* * * * *

(b) * * *

(4) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside containers of polyethylene or other nonfragile plastic material resistant to the lading, having threaded or other equally efficient closure, not over 32 ounces capacity each.

In § 73.257 amend paragraph (a) (6) (23 F. R. 7648, Oct. 3, 1958) to read as follows:

§ 73.257 Electrolyte (acid) or corrosive battery fluid.

(a) * * *

(6) Spec. 12B or 12C (§ 78.205 or § 78.206 of this chapter). Fiberboard boxes with inside containers of polyethylene or other electrolyte acid resistant nonfragile materials having secure closures capable of withstanding conditions incident to transportation without leakage and unless containers are rigid or semi-rigid in nature they must be contained in other strong inside containers; minimum thickness of polyethylene or other materials shall be not less than 0.003 inch for any film sheet for multi-wall containers or not less than 0.006 inch for single-wall containers; not more than 12 such inside containers shall be packed in one outside box and the marking prescribed in § 73.401(c) shall not be required. Inside containers shall be packed to prevent movement within the box (see § 78.205–34 of this chapter). Dry storage batteries or battery charger device may be packed in the same outside box when adequately separated from other inside containers (see § 78.205–33 of this chapter); gross weight of completed package shall not exceed 65 pounds, except when acid is packed in individual inside containers the gross weight shall be not over 75 pounds. Complete package, closed as for shipment, with inside containers filled with liquid of same specific gravity as commodity to be shipped, must be capable of withstanding at least 2 drops from a height of 4 feet onto solid concrete without leakage from or rupture of inside containers.

In § 73.268 add paragraph (b) (2) and (5); amend the introductory text of paragraphs (c), (d), (e), and (f) (21 F.R. 4565, June 26, 1956) (15 F.R. 8319, Dec. 2, 1950) to read as follows:

§ 73.268 Nitric acid.

* * * * *

(b) * * *

(2) The use of spec. 103C–AL special aluminum alloy tank cars is authorized for the transportation of 95 percent or greater nitric acid as provided in special orders of November 14, 1939, June 7, 1940, and August 19, 1941.

* * * * *

(5) Containers as specified in paragraphs (c), (d), (e), and (f), and within percentage limitations of this section.

(c) Nitric acid of 80 percent or greater concentration which does not contain significant quantities of sulfuric acid or hydrochloric acid as impurities, when offered for transportation by carriers by rail freight, highway, or water, in addition to and within limitations of paragraphs (b), (d), and (e) of this section, may be packed in specification containers as follows:

* * * * *

(d) Nitric acid of 90 percent or greater concentration, when offered for transportation by carriers by rail freight, highway, or water, in addition to and within limitations of paragraphs (b) and (c) of this section, may be packed in specification containers as follows:

* * * * *

(e) Nitric acid of concentration of less than 90 percent, when offered for transportation by carriers by rail freight, highway, or water, in addition to and within limitations of paragraphs (b), (c), and (f) of this section, may be packed in specification containers as follows:

* * * * *

(f) Nitric acid of concentration of 72 percent or less, when offered for transportation by carriers by rail freight, highway, or water, in addition to and within limitations of paragraphs (b) and (e) of this section, may be packed in specification containers as follows:

In § 73.269 amend paragraph (a) (1) (15 F.R. 8320, Dec. 2, 1950) to read as follows:

§ 73.269 Perchloric acid.

(a) * * *

(1) Spec. 15A, 15B, 15C, 16A, or 19A (§§ 78.168, 78.169, 78.170, 78.185, or § 78.190 of this chapter). Wooden boxes with glass inside containers consisting of glass bottles not over 5 pints capacity each, cushioned with incombustible mineral material in amount sufficient to absorb the acid.

In § 73.271 amend paragraph (a) (9) (23 F.R. 2326, Apr. 10, 1958) to read as follows:

§ 73.271 Phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.

(a) * * *

(9) Spec. 103A, 103A–W, or 111A100–W–2 (§ 78.266, § 78.281, or § 78.304 of this chapter). Tank cars. Spec. 103A (§ 78.266 of this chapter) tanks must be lead lined steel or made of steel at least 10 percent nickel clad. Spec. 103A–W or 111A100–W–2 (§ 78.281 or § 78.304 of this chapter) tanks must be lead lined steel or made of steel at least 20 percent nickel clad or with minimum thickness of cladding to be 1/16 inch. Nickel cladding in tanks must have a minimum nickel content of at least 99 percent pure nickel.

In § 73.292 amend paragraph (a) (2) (18 F.R. 6779, Oct. 27, 1953) to read as follows:

§ 73.292 Hexamethylene diamine solution.

(a) * * *

(2) Spec. MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 310, or MC 311 (§§ 78.321, 78.322, 78.323, 78.324, 78.325, 78.326, 78.330, or § 78.331 of this chapter). Tank motor vehicles.

Subpart G—Poisonous Articles; Definition and Preparation

In § 73.346 amend paragraph (a) (10) and (12) (22 F.R. 4792, July 9, 1957) (20 F.R. 952, Feb. 15, 1955) to read as follows:

§ 73.346 Poisonous liquids not specifically provided for.

(a) * * *

(10) Spec. 103, 103–W, 103A, 103AL–W, 103A–W, 104, 104–W, 105A100, 105A100–W, 105A200–W, 105A300–W, 105A400–W, 105A500–W, 105A600–W, 111A60AL–W, 111A100–W–1, 111A100–W–2, 111A100–W–3, 111A100–W–4, or ARA–IV–A[1] (§§ 78.265, 78.280, 78.266, 78.291, 78.281, 78.269, 78.284, 78.270, 78.285, 78.307, 78.286, 78.287, 78.288, 78.289, 78.310, 78.303, 78.304, 78.305, 78.306 of this chapter). Tank cars.

* * * * *

(12) Spec. MC 300, MC 301, MC 302, MC 303, MC 305, MC 310, or MC 311 (§§ 78.321, 78.322, 78.323, 78.324, 78.326, 78.330, or § 78.331 of this chapter). Tank motor vehicles.

In § 73.347 amend Note 1 to paragraph (a) (1) and amend paragraph (a) (3) (15 F.R. 8335, Dec. 2, 1950) to read as follows:

§ 73.347 Aniline oil.

(a) * * *

(1) * * *

NOTE 1: Because of the present emergency and until further order of the Commission, glass bottles not over 5 pints capacity each and not more than six of these bottles packed in one outside container are authorized.

* * * * *

(3) Spec. MC 300, MC 301, MC 302, MC 303, or MC 305 (§§ 78.321, 78.322, 78.323, 78.324, or 78.326 of this chapter). Tank motor vehicles.

In § 73.351 amend the introductory text of paragraph (a) (15 F.R. 8335, Dec. 2, 1950) to read as follows:

§ 73.351 Hydrocyanic acid solutions.

(a) Hydrocyanic acid solutions must be in glass bottles not over 1 pound capacity each for solutions of not over 5 percent strength and not over 5 pints capacity each for solutions of not over 2 percent strength and must be packed in specification containers as follows:

In § 73.352 amend paragraph (a) (5) (15 F.R. 8335, Dec. 2, 1950) to read as follows:

§ 73.352 Liquid sodium or potassium cyanide.

(a) * * *

(5) Spec. MC 300, MC 301, MC 302, MC 303, or MC 305 (§§ 78.321, 78.322, 78.323, 78.324, 78.326 of this chapter). Tank motor vehicles.

In § 73.364 amend the introductory text of paragraph (a) (24 F.R. 907, Feb. 6, 1959) to read as follows:

§ 73.364 Exemptions for poisonous solids, class B.

(a) Poisonous solids, class B, except beryllium metal powder; cyanides, other than as specified in § 73.370 (b) and (d); cyanogen bromide, hexaethyl tetraphosphate mixtures, methyl parathion mixtures, parathion mixtures, tetraethyl dithio pyrophosphate mixtures, and tetraethyl pyrophosphate mixtures, other than as specified in § 73.377(f); in tightly closed inside containers, securely cushioned when necessary to prevent breakage and packed as follows, are exempt from specification packaging, marking, and labeling requirements, except that marking name of contents on outside container is required for shipments via carrier by water. Shipments for transportation by highway carriers are exempt also from Part 77 of this chapter, except § 77.817, and Part 197 of this chapter.

In § 73.365 amend paragraph (a) (2) (23 F.R. 4030, June 10, 1958) to read as follows:

§ 73.365 Poisonous solids not specifically provided for.

(a) * * *

(2) Spec. 17E, 17H, 37A, or 37B (§§ 78.116, 78.118, 78.131, or § 78.132 of this chapter). Metal drums (single-trip). Gross weight not over 375 pounds, except for material fused solid in the drum a gross weight of 880 pounds and not over 550 pounds gross weight for waste material containing arsenic trioxide is authorized in drums constructed of at least 18 gauge steel regardless of gross weight marking embossed in the container.

In § 73.369 amend paragraph (a) (13) and (14) (22 F.R. 4792, July 9, 1957) (22 F.R. 7838, Oct. 3, 1957) to read as follows:

§ 73.369 Carbolic acid (phenol), not liquid.

(a) * * *

(13) Spec. 103, 103–W, 103AL–W, 103A, 103A–W, 103A–AL–W, 111A60AL–W, 111A100–W–1, or 111A100–W–2 (§§ 78.265, 78.280, 78.291, 78.266, 78.281, 78.292, 78.310, 78.303, or § 78.304 of this chapter). Tank cars.

(14) Spec. MC 300, MC 301, MC 302, MC 303, MC 305, MC 310, or MC 311 (§§ 78.321, 78.322, 78.323, 78.324, 78.326, 78.330, or § 78.331 of this chapter). Tank motor vehicles.

Add § 73.379 (15 F.R. 8338, Dec. 2, 1950) to read as follows:

§ 73.379 Cyanogen bromide.

(a) Cyanogen bromide must be packed in tightly closed glass, earthenware, or metal inside containers not over 1-pound capacity each, securely cushioned and

packed in outside wooden boxes. Net weight not over 25 pounds in one outside container.

Subpart H—Marking and Labeling Explosives and Other Dangerous Articles

In § 73.402 amend paragraphs (a) (13) and (b) (1) (20 F.R. 8103, 8104, Oct. 28, 1955) to read as follows:

§ 73.402 Labeling dangerous articles.

(a) * * *

(13) Labels authorized for shipments of explosives and other dangerous articles by air, as shown in §§ 73.405(b), 73.406(b), 73.407(b), 73.408(b), 73.409(b), 73.410(b), 73.411(b), 73.412(b), and 73.414(c), may be used in lieu of labels otherwise prescribed for surface transportation to or from airport.

(b) * * *

(1) Labels authorized for shipments of explosives and other dangerous articles by air are shown in §§ 73.405(b), 73.406(b), 73.407(b), 73.408(b), 73.409(b), 73.410(b), 73.411(b), 73.412(b), and 73.414(c). Shipments so labeled must be tendered with a signed certificate, in duplicate, reading as follows (one signed copy shall accompany each shipment and the other signed copy shall be retained by the original carrier):

[No change in certificate.]

PART 74—CARRIERS BY RAIL FREIGHT

Subpart A—Loading, Unloading, Placarding and Handling Cars; Loading Packages Into Cars

In § 74.526 amend paragraph (b) (18 F.R. 3137, June 2, 1953) to read as follows:

§ 74.526 Loading explosives into cars.

* * * * *

(b) Shipments of explosive bombs, unfuzed explosive projectiles, rocket ammunition, and jet thrust units when not packed in wooden boxes, and large metal containers of incendiary bombs weighing 500 pounds or more, each, may be loaded in stock cars or in gondola cars (flat bottom) when adequately braced. Wooden boxed bombs, rocket ammunition, or jet thrust units which, due to size, cannot be loaded in closed cars may be loaded in open top cars but must be protected against accidental ignition.

PART 78—SHIPPING CONTAINER SPECIFICATIONS

Subpart B—Specifications for Inside Containers and Linings

In § 78.35–3 amend paragraph (a) (21 F.R. 675, Jan. 31, 1956) to read as follows:

§ 78.35 Specification 2S; polyethylene drums.

§ 78.35–3 Construction and capacity.

(a) Drums must be constructed in accordance with the following table:

Capacity not over (gallons)[1]	Minimum thickness		Minimum weight (pounds)
	Side wall and bottom head (inch)	Top head [2] (inch)	
5	0.0625	0.0625	1.4
15	0.0625	0.0625	3.5
30	0.0625	0.0625	5.5
55	0.0625	0.0625	9.0

[1] Rated capacity plus 5 percent permitted.
[2] Head containing openings.

Subpart D—Specifications for Metal Barrels, Drums, Kegs, Cases, Trunks and Boxes

In § 78.82–7 paragraph (a) table, amend the sub-column headings "Body sheet", and "Head sheet [4]" to read "Body sheet [5]", and "Head sheet [4 5]", respectively, and add footnote 5 to paragraph (a) table; add § 78.82–15 paragraph (a) (23 F.R. 4031, June 10, 1958) (22 F.R. 3928, June 5, 1957) (15 F.R. 8434, Dec. 2, 1950) to read as follows:

§ 78.82 Specification 5B; steel barrels or drums.

§ 78.82–7 Parts and dimensions.

(a) * * *

[5] When drum is used in conjunction with an inside Spec. 2S (§ 78.35 of this chapter) polyethylene drum, two ⅛-inch holes are permitted diametrically opposite each other in the drum body near the bottom chime and three holes not exceeding ¼-inch in diameter in the bottom head.

§ 78.82–15 Type and leakage tests not required.

(a) Steel drums constructed in accordance with the specification and having drain or other permitted holes are not required to be type-tested as required by § 78.82–13 or leakage-tested as required by § 78.82–14 when drums are used as outside shipping containers for inside polyethylene or other plastic containers as prescribed by Part 73 of this chapter.

Add § 78.100–12 paragraph (a) (15 F.R. 8445, Dec. 2, 1950) to read as follows:

§ 78.100 Specification 6J; steel barrels and drums.

§ 78.100–12 Type test not required.

(a) Steel drums constructed in accordance with the specification and having drain or other permitted holes are not required to be type-tested as required by § 78.100–11 when drums are used as outside shipping containers for inside polyethylene or other plastic containers as prescribed by Part 73 of this chapter.

In § 78.115–10 amend paragraph (a) (1) (18 F.R. 3143, June 2, 1953) to read as follows:

§ 78.115 Specification 17C; steel drums.

§ 78.115–10 Marking.

(a) * * *

(1) ICC–17C. The letters STC; located near the ICC mark to indicate "single-trip container." In addition, when the container is of stainless steel, the type of steel used in body and head sheets as identified by American Iron and Steel Institute type number, and also the letters HT following steel designation on containers subjected to stress-relieving or heat-treatment during manufacture (for example, ICC–17C–304 or ICC–17C–304 HT as applicable) shall be shown. These marks shall be understood to certify that the container complies with all specification requirements.

In § 78.116–10 amend paragraph (a) (1) (18 F.R. 3143, June 2, 1953) to read as follows:

§ 78.116 Specification 17E; steel drums.

§ 78.116–10 Marking.

(a) * * *

(1) ICC–17E. The letters STC; located near the ICC mark to indicate "single-trip container." In addition, when the container is of stainless steel, the type of steel used in body and head sheets as identified by American Iron and Steel Institute type number, and also the letters HT following steel designation on containers subjected to stress-relieving or heat-treatment during manufacture (for example, ICC–17E–304 or ICC–17E–304 HT as applicable) shall be shown. These marks shall be understood to certify that the container complies with all specification requirements.

In § 78.117–11 amend paragraph (a) (1) (18 F.R. 3143, June 2, 1953) to read as follows:

§ 78.117 Specification 17F; steel drums.

§ 78.117–11 Marking.

(a) * * *

(1) ICC–17F. The letters STC; located near the ICC mark to indicate "single-trip container." In addition, when the container is of stainless steel, the type of steel used in body and head sheets as identified by American Iron and Steel Institute type number, and also the letters HT following steel designation on containers subjected to stress-relieving or heat-treatment during manufacture (for example, ICC–17F–304 or ICC–17F–304 HT as applicable) shall be shown. These marks shall be understood to certify that the container complies with all specification requirements.

In § 78.118–10 amend paragraph (a) (1) (18 F.R. 3143, June 2, 1953) to read as follows:

§ 78.118 Specification 17H; steel drums.

§ 78.118–10 Marking.

(a) * * *

(1) ICC–17H. The letters STC; located near the ICC mark to indicate "single-trip container." In addition, when the container is of stainless steel, the type of steel used in body and head sheets as identified by American Iron and Steel Institute type number, and also the letters HT following steel designation on containers subjected to stress-relieving or heat-treatment during manufacture (for example, ICC–17H–304 or ICC–17H–304 HT as applicable) shall be shown. These marks shall be understood to certify that the container complies with all specification requirements.

In § 78.119–10 amend paragraph (a) (1) (18 F.R. 3143, June 2, 1953) to read as follows:

§ 78.119 Specification 17X; steel barrels or drums.

§ 78.119–10 Marking.

(a) * * *

(1) ICC–17X. The letters STC; located near the ICC mark to indicate "single-trip container." In addition, when the container is of stainless steel, the type of steel used in body and head sheets as identified by American Iron and Steel Institute type number, and also the letters HT following steel designation on containers subjected to stress-relieving or heat-treatment during manufacture (for example, ICC–17X–304 or ICC–17X–304 HT as applicable) shall be shown. These marks shall be understood to certify that the container complies with all specification requirements.

In § 78.130–8 amend paragraph (a) (4) (15 F.R. 8454, Dec. 2, 1950) to read as follows:

§ 78.130 Specification 37K; steel drums.

§ 78.130–8 Marking.

(a) * * *

(4) The letters STC; located near the ICC mark to indicate "single-trip container".

In § 78.131–6 paragraph (a) table, amend the sub-column headings "Body sheet[3]", and "Head sheet[4]" to read "Body sheet[3] [6]" and "Head sheet[4] [6]", respectively, and add footnote 6 to paragraph (a) table; in § 78.131–9 amend paragraph (a) (4); add § 78.131–12 paragraph (a) (23 F.R. 4031, June 10, 1958) (22 F.R. 7842, Oct. 3, 1957) (20 F.R. 4419, June 23, 1955) to read as follows:

§ 78.131 Specification 37A; steel drums.

§ 78.131–6 Capacities, weights, type, and gauges.

(a) * * *

[6] When drum is used in conjunction with an inside Spec. 2S (§ 78.35 of this chapter) polyethylene drum, two ⅛-inch holes are permitted diametrically opposite each other in the drum body near the bottom chime and three holes not exceeding ¼ inch in diameter in the bottom head.

§ 78.131–9 Marking.

(a) * * *

(4) The letters STC; located near the ICC mark to indicate "single-trip container".

§ 78.131–12 Type test not required.

(a) Steel drums constructed in accordance with the specification and having drain or other permitted holes are not required to be type-tested as required by § 78.131–11 when drums are used as outside shipping containers for inside polyethylene or other plastic containers as prescribed by Part 73 of this chapter.

In § 78.132–9 amend paragraph (a) (4) (20 F.R. 4420, June 23, 1955) to read as follows:

§ 78.132 Specification 37B; steel drums.

§ 78.132–9 Marking.

(a) * * *

(4) The letters STC; located near the ICC mark to indicate "single-trip container".

In § 78.133–6 amend paragraph (a) and the introductory text of paragraph (b) (23 F.R. 2330, Apr. 10, 1958) to read as follows:

§ 78.133 Specification 37P; steel drums with polyethylene liner.

§ 78.133–6 Liner.

(a) Each metal drum shall contain a contour fitting polyethylene liner having heat-sealed seams or a one-piece seamless molded polyethylene unit, attached to the pour opening in the removable head so as to provide a container that is completely resistant to lading when closed as for use.

(b) Polyethylene liner or molded unit shall be fabricated throughout of virgin polyethylene tubing or mold material, which may include a low percentage of elastomeric polymer having minimum thickness of 0.010 inch and having the following physical properties:

Subpart F—Specifications for Fiberboard Boxes, Drums, and Mailing Tubes

In § 78.205–7 amend paragraph (a); in § 78.205–11 amend paragraph (c); in § 78.205–16 paragraph (a) table, amend the column heading "Authorized gross weight (pounds)" to read "Authorized[4] gross weight (pounds)", and add footnote 4 to paragraph (a) table; in § 78.205–17 amend paragraph (b) (15 F.R. 8475, Dec. 2, 1950) (18 F.R. 5277, Sept. 1, 1953) to read as follows:

§ 78.205 Specification 12B; fiberboard boxes.

§ 78.205–7 Tape.

(a) Coated with glue at least equal to No. 1¾ Peter Cooper standard. Cloth tape of strength, across the woof, at least 70 units, Elmendorf test. Sisal tape of 2 sheets of No. 1 Kraft paper, total weight 80 pounds per ream (500 sheets, 24" x 36"); sheets to be combined with asphalt and reinforced by unspun sisal fibers completely embedded in the asphalt and extending across the tape, except as provided in § 78.205–11(d). Other tapes of equal strength and efficiency are authorized.

§ 78.205–11 Joints.

* * * * * *

(c) For triple and double slide boxes: Joints of all slides must be taped (see § 78.205–7) or stitched; 3-inch tape required for boxes over 30 pounds authorized gross weight and 2-inch for others.

§ 78.205–16 Authorized gross weight and parts required.

(a) * * *

[4] Except as otherwise authorized herein or by Part 73 of this chapter.

§ 78.205–17 Closing for shipment.

* * * * *

(b) Double slide boxes or triple slide boxes, by coating the inner slides with adhesive, or by closing with reinforced tape capable of withstanding test prescribed by subparagraph (1) of this paragraph; for single-flap closures as authorized for boxes with one dimension not over 2 inches, the flaps must be fastened to the body with adhesive.

(1) Boxes selected at random, containing dummy contents similar to that to be shipped and packed to authorized gross weight, closed with reinforced tape across the ends and onto opposite side panels at least 2 inches, must be capable of withstanding a drop on each end from a height of 4 feet onto solid concrete without closure failure.

In § 78.218–11 amend paragraph (a) (15 F.R. 8480, Dec. 2, 1950) to read as follows:

§ 78.218 Specification 23G; special cylindrical fiberboard box for high explosives.

§ 78.218–11 Special tests.

(a) *By whom and when.* By or for each plant making the boxes; at beginning of manufacture and at 6-month intervals thereafter; on largest size, by weight. Smaller sizes need not be tested if they have the same or equivalent construction. Report of results, with all pertinent data, to be maintained on file for one year; copy to be filed with the Bureau of Explosives.

Subpart I—Specifications for Tank Cars

In § 78.265–19 amend paragraph (a) (21 F.R. 4569, June 26, 1956) to read as follows:

§ 78.265 Specification ICC–103; riveted steel tanks to be mounted on or forming part of a car.

§ 78.265–19 Tests of safety valves.

(a) Each valve must be tested, before being put into service, by attaching to an air line and applying pressure. The valve must not leak below 28 pounds pressure. The valve must open at the pressure prescribed in § 78.265–14(b), with a tolerance of plus or minus 3 pounds.

In § 78.267–4 amend paragraph (c); in § 78.267–5 amend paragraph (d) (21 F.R. 4572, June 26, 1956) to read as follows:

§ 78.267 Specification ICC–103B; rubber lined riveted steel tanks to be mounted on or forming part of a car.

§ 78.267–4 Thickness of plates.

* * * * *

(c) Tanks must be lined with rubber, or other approved material, at least $\frac{5}{32}$ inch thick, except that over all rivets and tank seams the lining must be double thickness. The lining must overlap at least 1½ inches at all edges, which must be straight and be beveled to an angle of approximately 45 degrees. An additional reinforcing pad at least 4½ feet square and at least ½ inch thick must be applied by vulcanizing to the lining on bottom of tank directly under the dome. The edges of pad must be beveled to an angle of approximately 45 degrees. An opening in this pad for sump is permitted. No lining shall be under tension when applied except that due to conformation over rivet heads. Interior of tank must be free from scale, oxidation, moisture, and all foreign matter during the lining operation.

§ 78.267–5 Material.

* * * * *

(d) Each tank or compartment thereof, must be lined with an acid-resisting rubber, or other approved material, vulcanized or bonded directly or otherwise attached to the metal tank, to provide a non-porous laminated lining.

In § 78.269–19 amend paragraph (a) (21 F.R. 4576, June 26, 1956) to read as follows:

§ 78.269 Specification 104; lagged riveted steel tanks to be mounted on or forming part of a car.

§ 78.269–19 Tests of safety valves.

(a) Each valve must be tested, before being put into service, by attaching to an air line and applying pressure. The valve must not leak below 28 pounds per square inch pressure. The valve must open at the pressure prescribed in § 78.269–14(b), with a tolerance of plus or minus 3 pounds.

In § 78.280–4 amend paragraph (g); in § 78.280–21 amend paragraph (a) (21 F.R. 4586, 4587, June 26, 1956) to read as follows:

§ 78.280 Specification ICC–103–W; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.280–4 Thickness of plates.

* * * * *

(g) When tank is divided into compartments the interior head must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with a tapped drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed, and the bottom hole may be closed; with not less than ¾ inch nor more than 1½ inch solid pipe plugs having standard pipe threads.

§ 78.280–21 Tests of safety valves.

(a) Each valve must be tested, before being put into service, by attaching to an air line and applying pressure. The valve must not leak below 28 pounds pressure. The valve must open at the pressure prescribed in § 78.280–16(b), with a tolerance of plus or minus 3 pounds.

In § 78.281–4 amend paragraph (f) (21 F.R. 4588, 4589, June 26, 1956) to read as follows:

§ 78.281 Specification ICC–103A–W; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.281–4 Thickness of plates.

* * * * *

(f) When tank is divided into compartments the interior head must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with a tapped drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed, and the bottom hole may be closed, with not less than ¾ inch nor more than 1½ inch solid pipe plugs having standard pipe threads.

In § 78.282–4 amend paragraphs (c) and (f); in § 78.282–5 amend paragraph (d) (21 F.R. 4591, June 26, 1956) to read as follows:

§ 78.282 Specification ICC–103B–W; rubber lined fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.282–4 Thickness of plates.

* * * * *

(c) Tank must be lined with rubber, or other approved material, at least 5/32 inch thick, except over all rivets and seams formed by riveted attachments where the lining must be double thickness. The lining must overlap at least 1½ inches at all edges, which must be straight and be beveled to an angle of approximately 45 degrees. An additional reinforcing pad at least 4½ feet square and at least ½ inch thick must be applied by vulcanizing to the lining on bottom of tank directly under the dome. The edges of pad must be beveled to an angle of approximately 45 degrees. An opening in this pad for sump is permitted. No lining shall be under tension when applied except that due to conformation over rivet heads. Interior of tank must be free from scale, oxidation, moisture, and all foreign matter during the lining operation.

* * * * *

(f) When tank is divided into compartments the interior head must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head, this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with a tapped drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed, and the bottom hole may be closed, with not less than ¾ inch nor more than 1½ inch solid pipe plugs having standard pipe threads.

§ 78.282–5 Material.

* * * * *

(d) Each tank or compartment thereof must be lined with acid-resisting rubber, or other approved material, vulcanized or bonded directly or otherwise attached to the metal tank, to provide a non-porous laminated lining.

In § 78.283–4 amend paragraph (e) (21 F.R. 4593, June 26, 1956) to read as follows:

§ 78.283 Specification ICC–103C–W; fusion-welded alloy steel tanks to be mounted on or forming part of a car.

§ 78.283–4 Thickness of plates.

* * * * *

(e) When tank is divided into compartments the interior head must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with a tapped drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed, and the bottom hole may be closed, with not less than ¾ inch nor more than 1½ inch solid pipe plugs having standard pipe threads.

In § 78.284–4 amend paragraph (g); in § 78.284–21 amend paragraph (a) (21 F.R. 4595, 4596, June 26, 1956) to read as follows:

§ 78.284 Specification ICC–104–W; lagged fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.284–4 Thickness of plates.

* * * * *

(g) When tank is divided into compartments the interior head must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with a tapped drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed, and the bottom hole may be closed, with not less than ¾ inch nor more than 1½ inch solid pipe plugs having standard pipe threads.

§ 78.284–21 Tests of safety valves.

(a) Each valve must be tested, before being put into service, by attaching to an air line and applying pressure. The valve must not leak below 28 pounds per square inch pressure. The valve must open at the pressure prescribed in § 78.284–16(b), with a plus or minus 3 pounds.

In § 78.291–4 amend paragraphs (a) and (e); in § 78.291–20 amend paragraph (a) (23 F.R. 7659, Oct. 3, 1958) (22 F.R. 7844, Oct. 3, 1957) (21 F.R. 4608, June 26, 1956) to read as follows:

§ 78.291 Specification ICC–103AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.291–4 Thickness of plates.

(a) The plate thickness shall not be less than that obtained by calculation using the following formula, and in no case be less than ½ inch:

$$t=\frac{Pd}{2SE}$$

where
t = thickness in inches of thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch as follows:

ASTM B-209 Alloy 996A—1060 =9,500 psi.
ASTM B-209 Alloy 990A—1100 =11,000 psi.
ASTM B-209 Alloy M1A—3003 =14,000 psi.
ASTM B-209 Alloy GR20A—5052=25,000 psi.
ASTM B-209 Alloy GS11A—6061 =24,000 psi.
ASTM B-209 Alloy GR40A—5154=30,000 psi.
ASTM B-209 Alloy GM40A—5086=35,000 psi.
ASTM B-209 Alloy GM31A—5454=31,000 psi.

E = efficiency of longitudinal welded joint =90 percent.

* * * * *

(e) When a tank is divided into compartments, the interior heads must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head, this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with at least one open drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed with not less than ¾ inch or not more than 1½ inch solid pipe plugs having standard pipe threads.

§ 78.291–20 Tests of safety valves.

(a) Each valve must be tested, before being put into service, by attaching to an air line and applying pressure. The valve must not leak below 28 pounds pressure. The valve must open at the pressure prescribed in § 78.291–15(b), with a plus or minus 3 pounds.

In § 78.292–4 amend paragraphs (a) and (e) (23 F.R. 7659, Oct. 3, 1958) (22 F.R. 7844, Oct. 3, 1957) to read as follows:

§ 78.292 Specification ICC–103A–AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.292–4 Thickness of plates.

(a) The plate thickness shall not be less than that obtained by calculation using the following formula; and in no case be less than ½ inch:

$$t=\frac{Pd}{2SE}$$

where
t = thickness in inches of thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch as follows:

ASTM B-209 Alloy 996A—1060 =9,500 psi.
ASTM B-209 Alloy 990A—1100 =11,000 psi.
ASTM B-209 Alloy M1A—3003 =14,000 psi.
ASTM B-209 Alloy GR20A—5052=25,000 psi.
ASTM B-209 Alloy GS11A—6061 =24,000 psi.
ASTM B-209 Alloy GR40A—5154=30,000 psi.
ASTM B-209 Alloy GM40A—5086=35,000 psi.
ASTM B-209 Alloy GM31A—5454=31,000 psi.

E = efficiency of longitudinal welded joint =90 percent.

* * * * *

(e) When a tank is divided into compartments, the interior heads must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head, this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with at least one open drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed with not less than ¾ inch or not more than 1½ inch solid pipe plugs having standard pipe threads.

In § 78.294–4 amend paragraph (a) (23 F.R. 7660, Oct. 3, 1958) to read as follows:

§ 78.294 Specification ICC–105A100–AL–W; lagged fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.294–4 Thickness of plates.

(a) The wall thickness in the cylindrical portion of the tank must be calculated by the following formula:

$$t=\frac{Pd}{2SE}$$

where
t = thickness in inches of thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch as follows:

ASTM B-209 Alloy 996A—1060 =9,500 psi.
ASTM B-209 Alloy 990A—1100 =11,000 psi.
ASTM B-209 Alloy M1A—3003 =14,000 psi.
ASTM B-209 Alloy GR20A—5052=25,000 psi.
ASTM B-209 Alloy GS11A—6061 =24,000 psi.
ASTM B-209 Alloy GR40A—5154=30,000 psi.
ASTM B-209 Alloy GM40A—5086=35,000 psi.
ASTM B-209 Alloy GM31A—5454=31,000 psi.

E = efficiency of longitudinal welded joint =90 percent.

In § 78.296–4 amend paragraph (c); in § 78.296–5 amend paragraph (d) (21 F.R. 4617, June 26, 1956) to read as follows:

§ 78.296 Specification ICC–103B100–W; rubber lined fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.296–4 Thickness of plates.

* * * * *

(c) Tank must be lined with rubber, or other approved material, at least 5/32 inch thick except over all rivets and seams formed by attachments where the lining must be double thickness. The lining must overlap at least 1½ inches at all edges, which must be straight and be beveled to an angle of approximately 45 degrees. An additional reinforcing pad at least 4½ feet square and at least ½ inch thick must be applied by vulcanizing to the lining on bottom of tank directly under the dome. Edges of pad must be beveled to an angle of approximately 45 degrees. An opening in this pad for sump is permitted. No lining shall be under tension when applied except that due to conformation over rivet heads. Interior of tank must be free from scale, oxidation, moisture, and all foreign matter during the lining operation.

§ 78.296–5 Material.

* * * * *

(d) Each tank must be lined with acid-resisting rubber, or other approved material, vulcanized or bonded directly or otherwise attached to the metal tank, to provide a non-porous laminated lining.

In § 78.297–4 amend paragraph (e); in § 78.297–20 amend paragraph (a) (21 F.R. 4619, 4620, June 26, 1956) to read as follows:

§ 78.297 Specification ICC–103D–W; fusion-welded alloy steel tanks to be mounted on or forming part of a car.

§ 78.297–4 Thickness of plates.

* * * * *

(e) When tank is divided into compartments the interior head must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with a tapped drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed, and the bottom hole may be closed, with not less than ¾ inch nor more than 1½ inch solid pipe plugs having standard pipe threads.

§ 78.297–20 Tests of safety valves.

(a) Valve must be tested, before being put into service, by attaching to an air line and applying pressure. The valve must not leak below 28 pounds pressure. The valve must open at the pressure prescribed in § 78.297–15(b), with a tolerance of plus or minus 3 pounds.

In § 78.298–4 amend paragraph (e); in § 78.298–20 amend paragraph (a) (21 F.R. 4621, 4622, June 26, 1956) to read as follows:

§ 78.298 Specification ICC–103E–W; fusion-welded alloy steel tanks to be mounted on or forming part of a car.

§ 78.298–4 Thickness of plates.

* * * * *

(e) When tank is divided into compartments the interior head must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with a tapped drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed, and the bottom hole may be closed, with not less than ¾ inch nor more than 1½ inch solid pipe plugs having standard pipe threads.

§ 78.298–20 Tests of safety valves.

(a) Valve must be tested, before being put into service, by attaching to an air line and applying pressure. The valve must not leak below 28 pounds pressure.

The valve must open at the pressure prescribed in § 78.298–15(b), with a tolerance of plus or minus 3 pounds.

In § 78.299–4 amend paragraph (e) (21 F.R. 4623, June 26, 1956) to read as follows:

§ 78.299 Specification ICC–103A–N–W; fusion-welded nickel or nickel alloy tanks to be mounted on or forming part of a car.

§ 78.299–4 Thickness of plates.

* * * * *

(e) When tank is divided into compartments the interior head must comply with the requirements for interior compartment heads prescribed herein. When the capacity is reduced by the insertion of a new interior head this head must comply with the requirements for interior compartment heads and the exterior head reapplied. Voids, created by the addition of heads for division into compartments or reduction in capacity, must be provided with a tapped drain-hole at their lowest point, and a tapped hole at top of tank. The top hole must be closed, and the bottom hole may be closed, with not less than ¾ inch nor more than 1½ inch solid pipe plugs having standard pipe threads.

In § 78.300–4 amend paragraph (a) (23 F.R. 7661, Oct. 3, 1958) to read as follows:

§ 78.300 Specification ICC–105A300–AL–W; lagged fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.300–4 Thickness of plates.

(a) The wall thickness in the cylindrical portion of the tank shall be calculated by the following formula:

$$t=\frac{Pd}{2SE}$$

where
t = thickness in inches of thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch as follows:

ASTM B–209 Alloy GR20A—5052=25,000 psi.
ASTM B–209 Alloy GS11A—6061 =24,000 psi.
ASTM B–209 Alloy GR40A—5154=30,000 psi.
ASTM B–209 Alloy GM40A—5086=35,000 psi.
ASTM B–209 Alloy GM31A—5454=31,000 psi.

E = efficiency of longitudinal welded joint =90 percent.

In § 78.302–4 amend paragraph (a) (23 F.R. 7661, Oct. 3, 1958) to read as follows:

§ 78.302 Specification ICC–109A100–AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.302–4 Thickness of plates.

(a) The wall thickness in the cylindrical portion of the tank must be calculated by the following formula:

$$t=\frac{Pd}{2SE}$$

where
t = thickness in inches of thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch as follows:

ASTM B–209 Alloy 996A—1060 =9,500 psi.
ASTM B–209 Alloy 990A—1100 =11,000 psi.
ASTM B–209 Alloy M1A—3003 =14,000 psi.
ASTM B–209 Alloy GR20A—5052=25,000 psi.
ASTM B–209 Alloy GS11A—6061 =24,000 psi.
ASTM B–209 Alloy GR40A—5154=30,000 psi.
ASTM B–209 Alloy GM40A—5086=35,000 psi.
ASTM B–209 Alloy GM31A—5454=31,000 psi.

E = efficiency of longitudinal welded joint =90 percent.

In § 78.303–18 amend paragraph (b) (23 F.R. 2333, Apr. 10, 1958) to read as follows:

§ 78.303 Specification ICC–111A100–W–1; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.303–18 Gauging devices.

* * * * *

(b) When loading and unloading devices (see § 78.303–17(a)) are applied to permit tank to be loaded with manway cover closed, a telltale pipe must be applied with a ¼-inch control valve mounted outside of the tank and enclosed within a cap or housing. The telltale pipe shall measure a liquid level that will indicate an outage not less than that specified in § 78.303–13(a).

In § 78.306–11 redesignate paragraph (a) (7) and (8) to (a) (8) and (9), respectively, and add paragraph (a) (7) (22 F.R. 4807, July 9, 1957) to read as follows:

§ 78.306 Specification ICC–111A100–W–4; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.306–11 Marking.

(a) * * *

(7) Water capacity of the tank in pounds stamped plainly and permanently in letters and figures at least ⅜ inch high into the metal of the tank immediately below the mark specified in subparagraphs (2) and (3) of this paragraph. This mark must also be stenciled on the jacket immediately below the dome platform and directly behind or within 3 feet of the right or left side of the ladder, or ladders, if there is a ladder on each side of the tank, in letters and figures at least 2 inches high as follows:

WATER CAPACITY
000000 POUNDS

(8) When a tank car and its appurtenances are designed and authorized for the transportation of a particular commodity, the name of that commodity followed by the word "only", or such other wording as may be required to indicate the limits of usage of the car, must be stenciled on each side of the tank, or jacket if lagged, in letters at least 1 inch high, immediately above the stenciled mark specified in subparagraph (1) of this paragraph.

(9) Tanks made of clad plates must be stenciled on the tank, or jacket if lagged, "(naming material)_____clad tank". Lined tanks must be stenciled on the tanks, or jacket if lagged, "(naming material)_____lined tank". These marks must be in letters at least 2 inches high, immediately above the stenciled mark specified in subparagraph (1) of this paragraph.

In § 78.308–4 amend paragraph (a) (23 F.R. 7662, Oct. 3, 1958) to read as follows:

§ 78.308 Specification ICC–105A200–AL–W; lagged fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.308–4 Thickness of plates.

(a) The wall thickness in the cylindrical portion of the tank must be calculated by the following formula:

$$t=\frac{Pd}{2SE}$$

where
t = thickness in inches of thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch as follows:

ASTM B–209 Alloy 996A—1060 =9,500 psi.
ASTM B–209 Alloy 990A—1100 =11,000 psi.
ASTM B–209 Alloy M1A—3003 =14,000 psi.
ASTM B–209 Alloy GR20A—5052=25,000 psi.
ASTM B–209 Alloy GS11A—6061 =24,000 psi.
ASTM B–209 Alloy GR40A—5154=30,000 psi.
ASTM B–209 Alloy GM40A—5086=35,000 psi.
ASTM B–209 Alloy GM31A—5454=31,000 psi.

E = efficiency of longitudinal welded joint =90 percent.

In § 78.309–3 amend paragraph (c); in § 78.309–5 amend paragraph (d) (23 F.R. 7663, Oct. 3, 1958) to read as follows:

§ 78.309 Specification ICC–111A100–W–5; rubber lined fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.309–3 Thickness of plates.

* * * * *

(c) Tank must be lined with rubber, or other approved material, at least 5/32 inch thick. The lining must overlap at least 1½ inches at all edges, which must be straight and be beveled to an angle of approximately 45 degrees. An additional reinforcing pad at least 4½ feet square and at least ½ inch thick must be applied by vulcanizing to the lining on bottom of tank directly under the manway opening. The edges of pad must be beveled to an angle of approximately 45 degrees. An opening in this pad for sump is permitted. No lining shall be under tension when applied. Interior of tank must be free from scale, oxidation, moisture, and all foreign matter during the lining operation.

§ 78.309–5 Material.

* * * * *

(d) Each tank or compartment thereof must be lined with acid-resisting rubber, or other approved material, vulcanized or bonded directly or otherwise attached to the metal tank to provide a non-porous laminated lining.

Add § 78.310 (21 F.R. 4628, June 26, 1956) to read as follows:

§ 78.310 Specification ICC–111A60AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

(a) Wherever the word "approved" is used in this specification, it means approval by the Association of American

Railroads Committee on Tank Cars as prescribed in § 78.259 (a), (b), (c) and (d).

§ 78.310–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. When the interior of the tank is divided into compartments, each compartment must have two heads designed convex outward. The tank shell, or each compartment, must be provided with manway and such other external projections as are prescribed herein.

§ 78.310–2 Bursting pressure.

(a) The calculated bursting pressure, based on the lowest tensile strength of the plate and the efficiency of the longitudinal welded joint, must not be less than 240 pounds per square inch.

§ 78.310–3 Thickness of plates.

(a) The wall thickness in the cylindrical portion of the tank must be calculated by the following formula, but in no case shall the wall thickness be less than ½ inch:

$$t=\frac{Pd}{2SE}$$

where

t = thickness in inches of the thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch as follows:

ASTM B–209 Alloy 996A—1060 =9,500 psi.
ASTM B–209 Alloy 990A—1100 =11,000 psi.
ASTM B–209 Alloy M1A—3003 =14,000 psi.
ASTM B–209 Alloy GR20A—5052=25,000 psi.
ASTM B–209 Alloy GS11A—6061 =24,000 psi.
ASTM B–209 Alloy GR40A—5154=30,000 psi.
ASTM B–209 Alloy GM40A—5086=35,000 psi.
ASTM B–209 Alloy GM31A—5454=31,000 psi.

E = efficiency of longitudinal welded joint =90 percent.

(1) For tanks without an underframe, the cylindrical portion of the tank must have a thickness that will result in stress not exceeding one-third of the minimum ultimate tensile strength of the alloy used as a result of 800,000 pounds impact and the end load ratio must not exceed 0.05.

(b) The thickness of an ellipsoidal head in which the ellipsoid of revolution has the major axis equal to the inside diameter of the shell and the minor axis is one-half the major axis, shall be determined by the following formula:

$$t=\frac{Pd}{2SE}$$

where

t = thickness of plate in inches;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch (see paragraph (a) of this section);
efficiency of welded joint, if any, =90 percent; if head is made of one piece, E=100 percent.

§ 78.310–4 Openings in tank.

(a) Openings for manway nozzle or other fittings must be reinforced in an approved manner.

§ 78.310–5 Material.

(a) All plates for tank must be made of aluminum alloy to an approved specification and be suitable for fusion-welding and not subject to rapid deterioration by the lading.

(b) Aluminum alloy castings for fittings or attachment to tank must be made of material to an approved specification.

(c) All rivets must be made of an aluminum alloy to an approved specification. They must be handled and driven in a manner that will insure the requisite strength.

(d) All external projections which may be in contact with the lading must be made of material specified herein.

§ 78.310–6 Tank heads.

(a) The tank head shape shall be an ellipsoid of revolution in which the major axis shall equal the diameter of the shell and the minor axis shall be one-half the major axis.

§ 78.310–7 Welding.

(a) All joints must be fusion-welded by a process which investigation and laboratory tests by the Mechanical Division of the Association of American Railroads have proved will produce satisfactory results. Fusion-welding to be performed by fabricators certified by the Association of American Railroads as qualified to meet the requirements of this specification. All joints must be fabricated by means of fusion-welding in accordance with the requirements of A.A.R. Welding Code, Appendix W.

§ 78.310–8 Stress relieving.

(a) Not a specification requirement.

§ 78.310–9 Tank mounting.

(a) The manner in which the tank is supported on and securely attached to the car structure must be approved.

(b) The use of rivets as a means of securing anchor to the tank is prohibited.

§ 78.310–10 Test of tanks.

(a) Each tank must be tested by completely filling tank and nozzles with water, or other liquid of similar viscosity, having a temperature which must not exceed 100 degrees Fahrenheit during the test, and applying a pressure of 60 pounds per square inch. The tank must hold the prescribed pressure for at least 10 minutes without leakage or evidence of distress.

(b) If tanks are lagged, the test of tank must be made before lagging is applied.

(c) Calking of welded joints to stop leaks developed during the foregoing tests is prohibited. Repairs in welded joints must be made as prescribed in § 78.310–7(a).

§ 78.310–11 Marking.

(a) Each tank must be marked, thus certifying that the tank complies with all the requirements of this specification, as follows:

(1) ICC–111A60AL–W and specification number of material used in tank shell in letters and figures at least ⅜ inch high stamped plainly and permanently into the metal near the center of both outside heads of the tank by the tank builder. ICC–111A60AL–W must also be stenciled on the tank, or jacket if lagged, in letters and figures at least 2 inches high by the party assembling the completed car.

(2) Initials of tank builder and date of original test of tank, in letters and figures at least ⅜ inch high stamped plainly, and permanently into the metal immediately below the stamped marks specified in subparagraph (1) of this paragraph.

(3) Initials of company and date of additional tests performed by the party assembling the completed car, in those cases where the tank builder does not complete the fabrication of tank, in letters and figures at least ⅜ inch high stamped plainly and permanently into the metal immediately below the stamped marks specified in subparagraph (2) of this paragraph by the party assembling the completed car. These marks must also be stenciled on the tank, or jacket if lagged, in letters and figures at least 2 inches high, immediately below the stenciled mark specified in subparagraph (1) of this paragraph.

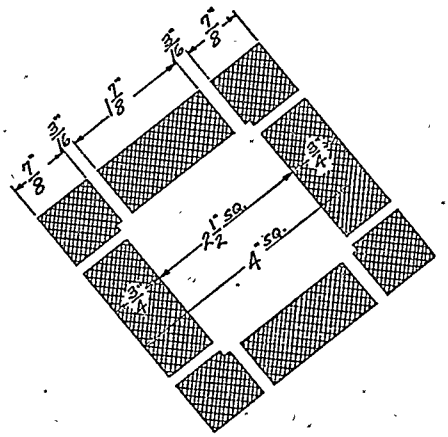
(4) Date on which the tank was last tested, pressure to which tested, place where test was made, and by whom, stenciled on the tank, or jacket if lagged.

(5) Date on which the safety valves were last tested, pressure to which tested, place where test was made, and by whom, stenciled on the tank, or jacket if lagged.

(6) Date on which interior heater system was last tested, pressure to which tested, place where test was made, and by whom, stenciled on the tank, or jacket if lagged.

(7) When a tank car and its appurtenances are designed and authorized for the transportation of a particular commodity only, the name of that commodity followed by the word "only", or such other wording as may be required to indicate the limits of usage of the car, must be stenciled on each side of the tank, or jacket if lagged, in letters at least one inch high, immediately above the stenciled mark specified in subparagraph (1) of this paragraph.

(8) Identification mark, illustrated herein, for manway closure must be stenciled on each side of manway nozzle, or jacket if lagged, in line with the ladders and in a color contrasting to color of manway nozzle.



Manhole Closure Identification Mark
(Reduced size)

§ 78.310–12 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of welded repairs to, alterations of, or additions to tanks or equipment from original design and construction, all of which must be approved, there must be furnished to the same parties a report in detail of the welded repairs, alterations or additions made to each tank involved. Reports of retests must be rendered to the Bureau of Explosives and car owner.

§ 78.310–13 Outage.

(a) Tanks built to this specification will require a minimum outage of 2 percent. The outage must be provided for in the tank shell.

§ 78.310–14 Lagging.

(a) Not a specification requirement. If applied, the tank shell must be lagged with an approved insulation material. The entire insulation must be covered with a metal jacket not less than ⅛ inch in thickness and efficiently flashed around all openings so as to be weathertight.

(b) Before lagging is applied, the exterior tank surface and the interior surface of the metal jacket shall be given a protective coating.

§ 78.310–15 Closure for manway.

(a) The manway cover must be of approved type and designed to make it impossible to remove the cover while the interior of the tank is subjected to pressure.

(b) Manway covers must be made of cast, forged or fabricated aluminum alloys or other approved materials. Manway nozzle must be made of cast, forged or fabricated aluminum alloys and must be of good weldable quality in conjunction with the metal of tank. Opening in the manway nozzle must not be less than 16 inches in diameter.

(c) All covers not hinged to tank must be attached to outside of the tank by at least a ⅜ inch chain or its equivalent.

(d) All joints between manway covers and their seats must be made tight against leakage of vapor and liquid by use of gaskets of suitable material.

§ 78.310–16 Bottom outlets.

(a) The bottom outlet, when installed, must be made of metal not subject to rapid deterioration by the lading, be of approved design and be provided with a liquid tight closure at the outlet end.

(b) The valve operating mechanism and outlet nozzle construction must be such as to insure against unseating the valve due to stresses or shocks incidental to transportation.

(c) Bottom outlet nozzle may be of cast, forged or fabricated metal. If outlet nozzle is welded to tank, it must be of cast, forged or fabricated metal and be of good weldable quality in conjunction with the metal of the tank.

(d) To provide for the attachment of unloading connections, the bottom of the main portion of the outlet nozzle, or some fixed attachment thereto, must be provided with threaded cap closure arrangement or bolted flange closure arrangement having minimum 1 inch threaded pipe plug.

(e) For outlet nozzles that extend 6 inches or more from the shell of tank, a "V" groove must be cut (not cast) in the upper part of the outlet nozzle at a point immediately below lowest part of valve to a depth that will leave thickness of nozzle wall at the root of the "V" not over ⅜ inch. In the case of steam jacketed outlet nozzles, this groove must be below the steam chamber, but not more than 15 inches from the tank. Where the outlet nozzle is not a single piece, arrangement must be made to provide the equivalent of the breakage groove.

(f) The flange on the outlet nozzle must be of a thickness which will prevent distortion of the valve seat or valve by any change in contour of the shell resulting from expansion of the lading, or other causes, and which will insure that accidental breakage of the outlet nozzle will occur at or below the "V" groove.

(g) The valve must have no wings or stem projecting below the "V" groove in the outlet nozzle. The valve and seat must be readily accessible or removable for repairs, including grinding.

(h) The valve operating mechanism must have means for compensating for variation in the vertical diameter of the tank produced by expansion, weight of the liquid contents, or other causes, and should operate from the exterior of the tank. Leakage must be prevented by packing in stuffing box, or other suitable seals, and a cap.

(i) In no case must extreme projection of bottom outlet equipment extend to within 12 inches above top of rail. All bottom outlet reducers and closures and their attachments must be secured to car with at least a ⅜-inch chain or its equivalent, except that outlet closure plugs may be attached by ¼-inch chain. When the bottom outlet closure is of the combination cap and valve type, the pipe connection of the valve must be closed by a plug or cap.

§ 78.310–17 Venting, loading and unloading devices.

(a) Installation of these devices is optional, and when installed, these devices and fittings must be of an approved design, and made of materials not subject to rapid deterioration by the lading.

(b) The venting device shall be an opening to permit application of pressure to tank. The loading and unloading device shall be a pipe extending down to the bottom of the tank so that, by application of pressure, the contents of the tank can be completely removed. The pipe shall be securely anchored at its lower end to prevent damage from surge of liquid.

(c) These devices must be equipped with valves to provide for the loading and unloading of the contents. These devices, including valves, must be of an approved design and be provided with a protective housing or equivalent. Provision must be made for closing pipe connections of valves.

§ 78.310–18 Gauging device.

(a) Outage for these tanks must be provided within the tank shell, therefore, an outage scale visible from manway when cover is open must be provided.

(b) A telltale pipe must be applied with a ¼-inch control valve mounted outside of the tank and enclosed within a cap. The telltale pipe shall measure a liquid level that will indicate an outage not less than that specified in § 78.310–13(a).

§ 78.310–19 Vacuum breaker.

(a) To prevent pressure reduction of more than 1½ pounds per square inch below atmospheric pressure, when unloading a tank with a closed manway cover, or from drop in temperature with subsequent shrinkage of lading, each tank shall be equipped with a valve of approved design.

§ 78.310–20 Safety valves.

(a) The tank, or each compartment thereof, must be equipped with one or more safety valves of approved design, mounted on suitable nozzles securely attached to the top of the tank. Total valve discharge capacity must be sufficient to prevent building up of pressure in tank in excess of 45 pounds per square inch.

(b) Each safety valve must be set for a start-to-discharge pressure of 35 pounds per square inch and be vapor tight at 28 pounds per square inch. (For tolerance see § 78.310–21(a).)

(c) Tanks used for the transportation of corrosive liquids, flammable solids, oxidizing materials or poisonous liquids or solids, class B, need not be equipped with safety valves, but if not so equipped, must have one safety vent made of approved material at least 1¾ inches inside diameter closed with a frangible disc of suitable material, of a thickness that will rupture at a pressure not exceeding 45 pounds per square inch. Means for holding disc in place must be such as to prevent distortion or damage to disc when applied. Safety vent closure must be chained or otherwise fastened to prevent misplacement. All tanks equipped with vents must be stenciled "NOT FOR FLAMMABLE LIQUIDS."

§ 78.310–21 Test of safety valves.

(a) Each valve must be tested by air or gas before being put into service. The valve must start to discharge at a pressure of 35 pounds per square inch and be vapor tight at 28 pounds per square inch, which limiting pressures must not be affected by any auxiliary closure or other combination. The valves must start to discharge at the pressure prescribed above with a tolerance of plus or minus 3 pounds.

§ 78.310–22 Interior heater systems.

(a) Not a specification requirement. When installed, see §§ 78.260 and 78.261, heater systems.

(b) Flanges for interior heater systems and plugs must be of cast, forged or fabricated metal. Flanges must be of good weldable quality in conjunction with the metal of the tank.

(c) Interior heater systems, when installed, must be so constructed that the breaking off of their external connections will not cause leakage of contents of tank.

(d) Interior heater systems must be tested with hydrostatic pressure and must be tight at 200 pounds per square inch.

Add § 78.311 (21 F.R. 4628, June 26, 1956) to read as follows:

§ 78.311 Specification ICC–111A100–W–6; fusion-welded alloy steel tanks to be mounted on or forming part of a car.

(a) Wherever the word "approved" is used in this specification, it means approval by the Association of American Railroads Committee on Tank Cars as prescribed in § 78.259 (a), (b), (c) and (d).

§ 78.311–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. When the interior of the tank is divided into compartments, each compartment must have two heads designed convex outward. The tank shell, or each compartment, must be provided with manway and such other external projections as are prescribed herein.

§ 78.311–2 Bursting pressure.

(a) The calculated bursting pressure, based on the lowest tensile strength of the plate and the efficiency of the longitudinal welded joint, must be not less than 500 pounds per square inch.

§ 78.311–3 Thickness of plates.

(a) The wall thickness in the cylindrical portion of the tank must be calculated by the following formula, but in no case shall the wall thickness be less than 7/16 inch:

$$t=\frac{Pd}{2SE}$$

where
t = thickness in inches of the thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch;
E = efficiency of longitudinal welded joint =90 percent.

(1) For tanks without an underframe, the cylindrical portion of the tank must have a thickness that will result in stress not exceeding 16,000 pounds per square inch as a result of 800,000 pounds impact and the end load ratio must not exceed 0.05.

(b) The thickness of an ellipsoidal head in which the ellipsoid of revolution has the major axis equal to the inside diameter of the shell and the minor axis is one-half the major axis, shall be determined by the following formula:

$$t=\frac{Pd}{2SE}$$

where
t = thickness of plate in inches;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch;
E = efficiency of welded joint, if any, =90 percent; if head is made of one piece, E=100 percent.

§ 78.311–4 Openings in the tank.

(a) Openings for manway nozzle or other fittings must be reinforced in an approved manner.

§ 78.311–5 Material.

(a) All plates for tank must be to an approved specification and be made of metal capable of resisting the action of nitric acid as follows:

(1) The maximum corrosion rate in inches penetration per month in the standard 65 percent boiling nitric acid test shall be 0.006 inch for the straight chromium-bearing stainless steel and 0.0015 inch for any of the chromium nickel alloys and modified chromium nickel type, this figure to be an average of five 48 hour periods.

(b) All alloy castings and forgings used for fittings or attachments to tank must be to an approved specification and not subject to rapid deterioration by the lading.

§ 78.311–6 Tank heads.

(a) The tank head shape shall be an ellipsoid of revolution in which the major axis shall equal the diameter of the shell and the minor axis shall be one-half the major axis.

§ 78.311–7 Welding.

(a) All joints must be fusion-welded by a process which investigation and laboratory tests by the Mechanical Division of the Association of American Railroads have proved will produce satisfactory results. Fusion-welding to be performed by fabricators certified by the Association of American Railroads as qualified to meet the requirements of this specification. All joints must be fabricated by means of fusion-welding in accordance with the requirements of A.A.R. Welding Code, Appendix W.

§ 78.311–8 Heat treatment.

(a) All welding of the tank shell and of attachments welded directly thereto must be heat treated as a unit to remove stresses and at the proper temperature to obtain the corrosion resistance specified in § 78.311–5(a) (1).

§ 78.311–9 Tank mounting.

(a) The manner in which the tank is supported on and securely attached to the car structure must be approved.

(b) The use of rivets as a means of securing anchor to the tank is prohibited.

§ 78.311–10 Tests of tanks.

(a) Each tank must be tested by completely filling the tank and manway nozzle with water, or other liquid of similar viscosity, having a temperature which must not exceed 100 degrees Fahrenheit during the test, and applying a pressure of 100 pounds per square inch. The tank must hold the pressure for at least 10 minutes without leakage or evidence of distress.

(b) If tanks are lagged, the test of tank must be made before lagging is applied.

(c) Calking of welded joints to stop leaks developed during the foregoing tests is prohibited. Repairs in welded joints must be made as prescribed in § 78.311–7(a).

§ 78.311–11 Marking.

(a) Each tank must be marked, thus certifying that the tank complies with all the requirements of this specification as follows:

(1) ICC–111A100–W and specification number of material used in tank shell in letters and figures at least 3/8 inch high stamped plainly and permanently into the metal near the center of both outside heads of the tank by the tank builder. ICC–111A100–W–6 must also be stenciled on the tank, or jacket if lagged, in letters and figures at least 2 inches high by the party assembling the completed car, using the classification group number for the stenciled marking.

(2) Initials of tank builder and date of original test of tank, in letters and figures at least 3/8 inch high stamped plainly and permanently into the metal immediately below the stamped marks specified in subparagraph (1) of this paragraph.

(3) Initials of company and date of additional tests performed by the party assembling the completed car, in those cases where the tank builder does not complete the fabrication of tank, in letters and figures at least 3/8 inch high stamped plainly and permanently into the metal immediately below the stamped marks specified in subparagraph (2) of this paragraph by the party assembling the completed car. These marks must also be stenciled on the tank, or jacket if lagged, in letters and figures at least 2 inches high immediately below the stenciled mark specified in subparagraph (1) of this paragraph by the party assembling the completed car.

(4) Date on which the tank was last tested, pressure to which tested, place where test was made, and by whom, stenciled on the tank, or jacket if lagged.

(5) Date on which the safety valves were last tested, pressure to which tested, place where test was made, and by whom, stenciled on the tank, or jacket if lagged.

(6) Date on which interior heater system was last tested, pressure to which tested, place where test was made, and by whom, stenciled on the tank, or jacket if lagged.

(7) When a tank car and its appurtenances are designed and authorized for the transportation of a particular commodity, the name of that commodity followed by the word "only", or such other wording as may be required to indicate the limits of usage of the car, must be stenciled on each side of the tank, or jacket if lagged, in letters at least 1 inch high, immediately above the stenciled mark specified in subparagraph (1) of this paragraph.

§ 78.311–12 Reports.

(a) Before a tank car is placed in service, the party assembling the completed

car must furnish to the car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of welded repairs to, alterations of, or additions to tanks or equipment from original design and construction, all of which must be approved, there must be furnished to the same parties a report in detail of the welded repairs, alterations or additions made to each tank covered by a particular application showing initials and number of each tank involved. Reports of retests must be rendered to the Bureau of Explosives and car owner.

§ 78.311–13 Outage.

(a) Tanks will be loaded with a minimum outage of 2 percent. This outage must be provided for in the tank shell.

§ 78.311–14 Lagging.

(a) Not a specification requirement. If applied, the tank shell must be lagged with an approved insulation material. The entire insulation must be covered with a metal jacket not less than ⅛ inch in thickness and efficiently flashed around all openings so as to be weathertight.

(b) Before lagging is applied, the exterior tank surface and the interior surface of the metal jacket shall be given a protective coating.

§ 78.311–15 Closure for manway.

(a) The manway cover must be of an approved type and designed to make it impossible to remove the cover while the interior of the tank is subjected to pressure.

(b) Manway nozzle and cover must be made of the metal prescribed in § 78.311–5 (a) or (b), whichever applies. Nozzle must be made of cast, forged or fabricated metal and be of good weldable quality in conjunction with the metal of the tank.

(c) All covers not hinged must be attached to outside of tank by at least a ⅜ inch chain or its equivalent.

(d) All joints between manway covers and their seats must be made tight against leakage of vapor or liquid by use of gaskets of suitable material.

§ 78.311–16 Bottom outlets.

(a) The bottom outlet, when installed, must be made of metal not subject to rapid deterioration by the lading, be of approved design and be provided with a liquid tight closure at the outlet end.

(b) The valve operating mechanism and outlet nozzle construction must be such as to insure against unseating the valve due to stresses or shocks incidental to transportation.

(c) Bottom outlet nozzle may be of cast, forged or fabricated metal. If outlet nozzle is welded to tank, it must be of cast, forged or fabricated metal and be of good weldable quality in conjunction with the metal of the tank.

(d) To provide for the attachment of unloading connections, the bottom of the main portion of the outlet nozzle, or some fixed attachment thereto, must be provided with threaded cap closure arrangement or bolted flange closure arrangement having minimum 1 inch threaded pipe plug.

(e) For outlet nozzles that extend 6 inches or more from the shell of the tank, a "V" groove must be cut (not cast) in the upper part of the outlet nozzle at a point immediately below lowest part of valve to a depth that will leave thickness of nozzle wall at the root of the "V" not over ⅜ inch. In the case of steam jacketed outlet nozzles, this groove must be below the steam chamber, but not more than 15 inches from the tank. Where the outlet nozzle is not a single piece, arrangement must be made to provide the equivalent of the breakage groove.

(f) The flange on the outlet nozzle must be of a thickness which will prevent distortion of the valve seat or valve by any change in contour of the shell resulting from expansion of the lading, or other causes, and which will insure that accidental breakage of the outlet nozzle will occur at or below the "V" groove.

(g) The valve must have no wings or stem projecting below the "V" groove in the outlet nozzle. The valve and seat must be readily accessible or removable for repairs, including grinding.

(h) The valve operating mechanism must have means for compensating for variation in the vertical diameter of the tank produced by expansion, weight of the liquid contents, or other causes, and should operate from the exterior of the tank. Leakage must be prevented by packing in stuffing box or other suitable seals and a cap.

(i) In no case must extreme projection of bottom outlet equipment extend to within 12 inches above top of rail. All bottom outlet reducers and closures and their attachments must be secured to car by at least a ⅜ inch chain or its equivalent, except that outlet closure plugs may be attached by ¼ inch chain. When the bottom outlet closure is of the combination cap and valve type, the pipe connection of the valve must be closed by a plug or cap.

§ 78.311–17 Venting, loading and unloading devices.

(a) Installation of these devices is optional, and when installed, these devices and fittings must be of an approved design, and made of materials not subject to rapid deterioration by the lading.

(b) The venting device shall be an opening to permit application of pressure to tank. The loading and unloading device shall be a pipe extending down to the bottom of the tank so that, by application of pressure, the contents of the tank can be completely removed. The pipe shall be securely anchored at its lower end to prevent damage from surge of liquid.

(c) These devices must be equipped with valves to provide for the loading and unloading of the contents. These devices including valves, must be of an approved design and be provided with a protective housing or equivalent. Provision must be made for closing pipe connections of valves.

§ 78.311–18 Gauging devices.

(a) Outage for these tanks must be provided within the tank shell, therefor, an outage scale visible from manway when cover is open must be provided.

(b) When loading and unloading devices, see § 78.311–17(a), are applied to permit tank to be loaded with manway cover closed, a telltale pipe must be applied with a ¼ inch control valve mounted outside of the tank and enclosed within a cap. The telltale pipe shall measure a liquid level that will indicate an outage not less than that specified in § 78.311–13(a).

§ 78.311–19 Vacuum breaker.

(a) To prevent pressure reduction of more than 1½ pounds per square inch below atmospheric pressure, when unloading a tank with a closed manway cover, or from drop in temperature with subsequent shrinkage of lading, each tank shall be equipped with a valve of approved design.

§ 78.311–20 Safety valves.

(a) The tank, or each compartment thereof, must be equipped with one or more safety valves of approved design, mounted on suitable nozzles securely attached to the top of the tank. Total valve discharge capacity must be sufficient to prevent building up of pressure in tank in excess of 85 pounds per square inch.

(b) Each safety valve must be set for a start-to-discharge pressure of 75 pounds per square inch and be vapor tight at 60 pounds per square inch. (For tolerance see § 78.311–21(a).)

(c) Tanks used for the transportation of corrosive liquids, flammable solids, oxidizing materials, or poisonous liquids or solids, class B, need not be equipped with safety valves, but if not so equipped, must have a safety vent at least 1¾ inches inside diameter, closed with a frangible disc of lead or other suitable material, of a thickness that will rupture at a pressure of not more than 75 pounds per square inch. Means for holding disc in place must be such as to prevent distortion or damage to disc when applied. Safety vent closure must be chained or otherwise fastened to prevent misplacement. All tanks equipped with vents must be stenciled "NOT FOR FLAMMABLE LIQUIDS".

§ 78.311–21 Tests of safety valves.

(a) Each valve must be tested by air or gas before being put into service. The valve must start to discharge at a pressure of 75 pounds per square inch and be vapor tight at 60 pounds per square inch, which limiting pressures must not be affected by any auxiliary closure or other combination. The valves must start to discharge at the pressure prescribed in § 78.311–20(b) with a tolerance of plus or minus 3 pounds.

§ 78.311–22 Interior heater systems.

(a) Not a specification requirement. When installed, see §§ 78.260 and 78.261, heater systems.

(b) Flanges for interior heater systems and plugs must be of cast, forged or fabricated material complying with the re-

quirements of § 78.311–5 (a) or (b), whichever applies.

(c) Interior heater systems, when installed, must be so constructed that the breaking off of their external connections will not cause leakage of the contents of tank.

(d) Interior heater systems must be tested with hydrostatic pressure and must be tight at 200 pounds per square inch.

In § 78.313–4 amend paragraph (a) (23 F.R. 7664, Oct. 3, 1958) to read as follows:

§ 78.313 Specification ICC–109A200–AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.313–4 Thickness of plates.

(a) The wall thickness in the cylindrical portion of the tank must be calculated by the following formula:

$$t=\frac{Pd}{2SE}$$

where

t = thickness in inches of thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch as follows:

ASTM B–209 Alloy 996A—1060 =9,500 psi.
ASTM B–209 Alloy 990A—1100 =11,000 psi.
ASTM B–209 Alloy M1A—3003 =14,000 psi.
ASTM B–209 Alloy GR20A—5052=25,000 psi.
ASTM B–209 Alloy GS11A—6061 =24,000 psi.
ASTM B–209 Alloy GR40A—5154=30,000 psi.
ASTM B–209 Alloy GM40A—5086=35,000 psi.
ASTM B–209 Alloy GM31A—5454=31,000 psi.

E = efficiency of longitudinal welded joint =90 percent.

In § 78.314–4 amend paragraph (a) (23 F.R. 7664, Oct. 3, 1958) to read as follows:

§ 78.314 Specification ICC–109A300–AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.314–4 Thickness of plates.

(a) The wall thickness in the cylindrical portion of the tank must be calculated by the following formula:

$$t=\frac{Pd}{2SE}$$

where

t = thickness in inches of thinnest plate;
P = calculated bursting pressure, pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch as follows:

ASTM B–209 Alloy GR20A—5052=25,000 psi.
ASTM B–209 Alloy GS11A—6061 =24,000 psi.
ASTM B–209 Alloy GR40A—5154=30,000 psi.
ASTM B–209 Alloy GM40A—5086=35,000 psi.
ASTM B–209 Alloy GM31A—5454=31,000 psi.

E = efficiency of longitudinal welded joint =90 percent.

[F.R. Doc. 59–3767; Filed, May 4, 1959; 8:47 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 925]

[Docket No. AO–226–A6]

MILK IN PUGET SOUND, WASHINGTON, MARKETING AREA

Notice of Extension of Time for Filing Exceptions to Recommended Decision to Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Puget Sound, Washington, marketing area, which was issued April 23, 1959 (24 F.R. 3284), is hereby extended to May 29, 1959.

Dated: April 30, 1959.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 59–3795; Filed, May 4, 1959; 8:50 a.m.]

[7 CFR Part 927]

MILK IN NEW YORK-NEW JERSEY MILK MARKETING AREA

Suspension of Certain Provisions of Order

Notice is hereby given that, pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), consideration is being given to the suspension of certain provisions of the order, as amended, regulating the handling of milk in the New York-New Jersey milk marketing area, relating to the reduction of nearby differentials depending upon the volume of milk subject to nearby differentials relative to the volume of Class I–A milk in two specified 12-month periods. Consideration of such suspension is occasioned by the receipt of a request therefor (pending opportunity for consideration of proposed amendments at a public hearing) on the basis that currently reduced nearby differential rates are improper in that they are the result of an amendment to the order made effective on September 1, 1958 (23 F.R. 6737) under which additional producers became eligible for nearby differentials.

The provisions proposed to be suspended are:

§ 927.71 Location differentials.

* * * * *

(b) * * *

(6) The differential shall be reduced by 10 percent for each full .01 that the ratio computed pursuant to subdivision (i) of this subparagraph exceeds the ratio computed pursuant to subdivision (ii) of this subparagraph:

(i) Divide the total receipts of milk subject to the nearby differential in the preceding 12 months by the total Class I–A milk in such 12 months, and

(ii) Divide the total receipts of milk subject to the nearby differential in the first 12 months of this provision by the total Class I–A milk in the first 12 months of this provision.

All persons desiring to submit data, views and arguments with respect to the foregoing proposed suspension may do so by forwarding four copies thereof postmarked no later than May 7, 1959, to the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C.

Issued at Washington, D.C., this 30th day of April 1959.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 59–3794; Filed, May 4, 1959; 8:50 a.m.]

[7 CFR Part 927]

[Docket No. AO–71–A38]

MILK IN NEW YORK-NEW JERSEY MILK MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement, and order regulating the handling of milk in the New York-New Jersey milk marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than the close of business the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Elmira, New York on January 6 and 7, 1959 pursuant to notice thereof issued on November 25, 1958 (23 F.R. 9269).

The material issues on the record of the hearing relate to the level of the Class I–A price, and more specifically to:

(1) Whether, in view of the currently existing relationship of the Class I–A price to the midwest condensery price, an adjustment should be made in the level of the Class I–A, and

(2) Whether change should be made in that provision of the order (927.40-(b)(3)) which requires that a public hearing be called (or that reasons for not doing so be announced) whenever the Class I–A price is more than $2.50 (or less than $1.00) higher than the midwest condensery price for each of three consecutive months (this provision hereinafter called "the price review provision").

Findings and conclusions. The findings and conclusions hereinafter set forth relative to the above listed issues are based on the evidence presented at the hearing and in the record thereof.

Issues No. 1 and 2:

It is concluded that the order should be amended to include a provision limiting the Class I–A price in relation to the value of milk from manufacturing as measured by the midwest condensery price and that such provisions should be substituted for the price review provision presently contained in the order. Accordingly, one set of findings are made with reference to both listed issues.

There have been two periods since July 1957 during which the conditions specified in the price review provision of the order have existed. The first such period was August 1957 to February 1958 and, pursuant to the price review provision, a public hearing was held on December 5 and 6, 1957. The decision of February 25, 1958 (23 F.R. 1276) based on the record of that hearing was that provisions of the order for the pricing of Class I–A milk were operating to produce Class I–A prices consistent with the prescribed pricing standards of the Act, and accordingly, that no amendment should be issued. The second such period extended from August 1958 through March 1959. For purposes of this decision official notice is taken of price announcements issued by the market administrator pursuant to provisions of the order since the end of the hearing on January 7, 1959.

Following a period of three consecutive months (August, September and October 1958) in which Class I–A prices exceeded condensery prices by more than $2.50, this public hearing, on the record of which this decision is based, was called pursuant to the price review provision of the order and also to receive evidence on proposals of producer organizations to amend that provision by changing in various ways the specified conditions requiring review. Such proposals included those to (1) increase the upper and lower limits of the amount by which Class I–A prices may exceed condensery prices, (2) calculate such differences prior to application of the seasonal and utilization adjustment factors used in the Class I–A price formula, (3) increase the period during which Class I–A prices may exceed condensery prices, and (4) provide for automatic adjustments in Class I–A prices under specified conditions rather than merely for a review of the Class I–A price level.

A decision on the issues here presented requires consideration of the purposes or objectives properly sought to be accomplished in the fixing of Class I–A prices under the order. The Agricultural Marketing Agreement Act of 1937, as amended, pursuant to which minimum prices are established under the order, authorizes the Secretary of Agriculture to fix such prices as he finds will reflect the price of feeds, the available supply of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, insure a sufficient quantity of pure and wholesome milk and be in the public interest. Prices established under the order must conform to these standards.

Class I–A prices have exceeded midwest condensery prices by more than $2.50 in 15 months of the 20-month period from August 1957 to March 1959, inclusive. The difference between the two prices ranged from $2.09 (June 1958) to $3.07 (November 1957) and averaged $2.51 for the year 1957 and $2.58 for the year 1958. Comparable differences for the years 1954, 1955 and 1956 were $2.13, $2.24 and $2.17, respectively. The average amount by which Class I–A prices exceeded condensery prices in the seven-month period, August 1958 to February 1959 inclusive, was $2.81, an amount 3 cents greater than in the corresponding period a year earlier. During the first 3 months of 1959, the margin of Class I–A over condensery prices was $2.69, 11 cents larger than for the same period in 1958.

Monthly Class I–A prices for the year 1957 averaged $5.64, an increase of 35 cents from 1956 and reflecting increases both in the wholesale price index and in the percentage of pool milk in Class I. The 1958 average of Class I–A prices declined 5 cents to $5.59. During the 9-month period August 1958 through April 1959, Class I–A prices averaged $5.76, a reduction of 3 cents from the average for the same period a year earlier.

Receipts of pool milk in the 7-month period ending with February 1959 were 1.1 percent greater than during the 7-month period ending with February 1958. Concurrently, Class I sales declined 0.7 percent. (Annual data for 1957 and 1958 are not comparable due to expansion of the marketing area effective August 1, 1957.) The number of producers declined from a high of 53,594 in September 1957 to 51,479 in September 1958. From February 1958 to February 1959, the number of producers declined from 52,192 to 50,212, a decrease of nearly 4 percent. The trend of larger volume per producer continues however. Deliveries of milk per day per producer have been greater than a year earlier in every month since July 1957 and in February 1959 averaged 530 pounds, about 5 percent more than in February 1958. Daily deliveries per producer averaged 472 pounds in 1956, 490 pounds in 1957 and 529 pounds in 1958.

Monthly Class I utilization percentages (percentages of pool milk in Class I) averaged 61.8 for the period August 1958–February 1959, down slightly from 63 for the comparable period in 1957–58. Weather conditions in August, September and October 1958 more favorable than in the same months in 1957 appear to have contributed to an increase in production and lower utilization percentages for these months in 1958. Utilization percentages for these months in 1957 were 63.8, 69.3 and 65.5, respectively and 59.9, 64.4 and 63.3 for the same months in 1958. However, for three of the four latest months for which data are available (November 1958–February 1959), utilization percentages are higher than for the same months a year ago. The averages for these four-month periods in 1957–58 and 1958–59 were 60.3 and 61.2, respectively. While not comparable (because of marketing area expansion) annual averages of monthly utilization percentages have increased from 49.4 in 1956 to 54.2 in 1957 and to 56.1 in 1958. Monthly utilization adjustment percentages used in the calculation of the Class I–A price each month, which are designed to reflect monthly changes in the annual average level of utilization, averaged 99.4 for the period October 1958–April 1959 and 101.0 for the same period a year earlier. The percentage used in calculating the April 1959 price was 99.8 compared to 100.4 used for April 1958.

Taking into account the volume of pool milk utilized for fluid cream in the marketing area (a substantial part of which also is required by health authorities to be obtained from approved sources) the percentage of pool milk required for fluid use was about 76 in November 1958 compared with about 78 percent in November 1957. The month of November usually is the month when pool receipts are lowest relative to fluid sales. (In 1957, however, drought conditions brought fluid requirements to about 81 percent of pool receipts in September.) Thus, the supply of pool milk relative to fluid sales in the month when production normally is lowest was slightly greater in 1958 than in 1957 but still not greatly in excess of fluid requirements plus an adequate reserve. As earlier indicated, the supply of pool milk in the short season of 1958 appears to be a reflection of unusually favorable weather conditions, and in more recent months (since October 1958) the percentage of pool milk in fluid use was slightly larger than in the same period a year ago.

Any milk meeting the quality requirements of marketing area health authorities, wherever produced, must be considered as comprising a part of the potential supply for the marketing area. Thus, it is appropriate to consider the level of the Class I–A price in relation to Class I prices in other markets. The Class I–A price has been in rather close alignment with Class I prices in other northeastern markets for several years. For the years 1956, 1957 and 1958, New York-New Jersey Class I–A prices averaged $5.29, $5.64 and $5.59 while Boston Class I prices averaged $5.30, $5.68 and $5.52 (all for 3.5 milk in the 200-mile zone). For the same years, Philadelphia Class I prices (for 3.5 milk f.o.b. market) averaged $5.29, $5.39 and $5.45. Class I prices under recently issued orders for South-

eastern New England and Connecticut are closely aligned with Boston.

In relation to the Chicago Class I price, however, the New York-New Jersey Class I–A price (in common with Class I prices in other northeastern markets) has increased substantially in recent years. During the period 1947–56, the New York Class I–A price exceeded the Chicago Class I price by an average of $1.16. During the three-year period 1954–56, the difference averaged $1.36 and for the years 1957 and 1958 the average annual differences were $1.78 and $1.87, respectively. Other areas nearer to New York constituting potential sources of milk for the marketing area are the milksheds and adjacent production areas from which milk is produced for such markets as Cleveland, Detroit and Ft. Wayne. In general, however, the Class I prices in those areas are, and may be expected to remain, in rather close alignment with the Chicago Class I price plus the cost of transportation. Since the Chicago Class I price and Class I prices in the other enumerated markets located between New York and Chicago are more closely related to manufacturing milk values, a provision specifying a maximum margin by which the New York-New Jersey Class I–A price may exceed the midwest condensery price also will tend to achieve a somewhat closer relationship between the Class I–A price and such other market Class I prices.

The margin of the Class I–A price over the midwest condensery price, and in turn over Class I prices in other markets which are more closely related to manufacturing milk values, has increased during the past 2 years while at the same time, particularly since the middle of 1958, the supply of fluid milk relative to fluid sales has tended to increase as reflected both in Class I utilization percentages and in utilization adjustment percentages during this period. The increase in the volume of pool milk relative to fluid sales in recent months has been reflected in slightly lower Class I–A prices. At the same time, the margin of the Class I–A prices over the condensery price has become wider, partly because of lower midwest condensery prices and partly because increases in the wholesale price index have tended to offset Class I–A price reductions resulting from lower utilization adjustment percentages.

A level of Class I–A prices higher than at present in relation to the midwest condensery price cannot be justified at least with the currently existing level of supply relative to fluid sales. Accordingly, it is concluded that a provision should be included in the order which establishes definite maximum margins by which the Class I–A price may exceed the midwest condensery price with such margins related to the prevailing level of supply relative to Class I sales.

In any calculation of the margin of the Class I–A price over the condensery price, it must be recognized that the seasonal variation in Class I–A prices is substantially greater than in condensery prices. The seasonal variation in Class I–A prices was $1.20 in 1957 (from $5.02 in June to $6.22 in November) and $1.06 in 1958 (from $4.98 in June to $6.04 in November). On the other hand, the seasonal variation in condensery prices was only about 21 cents in 1957 (from 3.042 in July to 3.252 in January) and 24 cents in 1958 (from 2.89 in June to 3.133 in January). These differing seasonal patterns are reconciled, for the purpose of calculating the margin of Class I–A over condensery prices, by using a 12-month moving average of condensery prices and the Class I–A price prior to seasonal adjustment. At the time that the Class I–A price for a particular month is calculated (by the 25th of the preceding month), the latest month for which a midwest condensery price is available is the second month preceding the month for which the Class I–A price is being calculated. Thus, the amendment herein found to be appropriate provides for maximum margins in Class I–A prices over condensery prices obtained by calculating for each month the difference between the Class I–A price, prior to seasonal adjustment, and the average of midwest condensery prices for a period of 12 months ending with the second preceding month.

Margins calculated in this way have been greater since 1949 than previously and have tended to increase rather consistently since about the middle of 1953. Such margins have exceeded $2.00 in every month since September 1954 and since that time have ranged from $2.04 (November 1955) to $2.64 (March 1959). For the past 2 years, margins calculated in this way have averaged about $2.50 but were in excess of $2.50 in 7 months in 1957, in 8 months in 1958 and in the first 4 months in 1959.

It is appropriate, of course, that Class I–A pricing provisions of the order operate to increase Class I–A prices during periods of increasing fluid utilization percentages and decrease prices during periods of declining fluid utilization percentages. In general, this objective is achieved under the present pricing provisions through operation of the utilization adjustment factor in the formula. However, existing order provisions do not prevent a widening of the margin between Class I–A and condensery prices in periods when milk supplies relative to fluid sales either remain constant or increase as was the case during recent months since the middle of 1958. Such wider margins develop, notwithstanding the price decreasing influence of the utilization adjustment percentage, due either to an increase in the wholesale price index or to a reduction in midwest condensery prices or both. The amendment herein provided is designed to prevent a recurrence of this development.

The level of Class I–A prices in relation to manufacturing milk values and Class I prices in midwestern markets which can be justified is higher when supplies of pool milk relative to fluid sales are small or declining than when reserve supplies of pool milk are somewhat larger than necessary or are increasing. Accordingly, different maximum margins over condensery prices are specified herein depending upon the existing relationship of pool milk supplies to fluid sales in the market. This relationship is measured at present by the utilization adjustment percentage which is calculated each month and is the means by which changes in such relationship currently are reflected in the price. The same factor is appropriate for use also in determining the appropriate margin over condensery prices which should be applied depending upon the level of supply relative to fluid sales.

The percentage of pool milk utilized in Class I in the month of lowest production is about 10 points higher than the annual average of monthly utilization percentages. For example, in 1958 the average of monthly Class I utilization percentages was about 56 and the highest percentage for a single month (November) was about 65. Comparable figures for 1957 (after adjustment of monthly percentages prior to extension of the marketing area) were about 59 and 69, respectively. When supplies of milk required for fluid cream are taken into account, these utilization percentages are increased by about 11 percentage points with the result that the percentage of pool milk in the month of shortest supply required for fluid milk and cream requirements was about 80 percent in 1957 and about 76 percent in 1958. With utilization at the level prevailing in 1958, there is found to be no justification for a margin between the levels of Class I–A and condensery prices which is greater than the average for the year 1958 of approximately $2.50.

Monthly Class I utilization percentages for the year 1958 average 56.1. Utilization adjustment percentages for the same months average 100. In general, changes in the average of Class I utilization percentages are reflected in changes of an equivalent amount in the average of utilization adjustment percentages. Accordingly, in order to achieve the objectives here indicated, provision is made for maximum margins of Class I–A prices over the level of midwest condensery prices by amounts ranging from $2.20 to $2.80 with the maximum of $2.20 being applicable when the utilization adjustment percentage is less than 94 and $2.80 being applicable when the utilization adjustment percentage is 104 or more. The maximum margin would be $2.50 with utilization adjustment percentages within a range of 98 to less than 100 but such margin would increase to $2.60 with utilization adjustment percentages within a range of 100 to less than 102. Similarly, the maximum would change to $2.70 with utilization adjustment percentages ranging from 102 to less than 104 . On the other hand, should utilization adjustment percentages decline to a level between 96 and less than 98, reflecting increased supplies relative to fluid sales, the maximum margin would be $2.40 and should the utilization adjustment percentages decline to a level between 94 and less than 96, the maximum margin would be $2.30. A maximum margin of less than $2.20 appears unnecessary since conditions under which a such smaller margin should be prescribed appear also to constitute conditions justifying further review and consideration at a public hearing. A maximum margin of $2.80 is provided when the utilization adjust-

ment percentage is 104 or higher since information currently available indicates that a margin of this amount probably would be sufficient to attract milk from additional sources and, as with the lowest specified margin of $2.20, it appears likely that conditions justifying a margin greater than $2.80 also would justify further review and consideration at a public hearing.

September 1958 is the first month in which the proposed amendment would have operated to reduce the Class I–A price. It also would have reduced the price in every month since September (through April 1959). These reductions would have been in amounts ranging from 1 cent (in October, November and December) to 9 cents (in April) and averaged 3.8 cents for the 8-month period September 1958–April 1959.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditons thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order regulating the handling of milk in the New York-New Jersey milk marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

1. Amend § 927.40(a)(10) by adding thereto the following proviso:

Provided, That the price calculated pursuant to this subparagraph shall not exceed the average of midwest condensery prices, announced pursuant to § 927.46(b)(9), for the 12-month period ending with the second preceding month by more than the following specified amounts:

When the utilization adjustment percentage calculated pursuant to subparagraph (9) of this paragraph is—	Dollars
less than 94	2.20
94 to less than 96	2.30
96 to less than 98	2.40
98 to less than 100	2.50
100 to less than 102	2.60
102 to less than 104	2.70
104 and over	2.80

2. Amend § 927.40(b) by deleting subparagraph (3) thereof.

Issued at Washington, D.C., this 30th day of April 1959.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 59-3797; Filed, May 4, 1959; 8:50 a.m.]

[Docket No. AO-302-A1]

[7 CFR Part 990]

MILK IN SOUTHEASTERN NEW ENGLAND MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in Courtroom No. 308, Federal Building, Providence, Rhode Island, beginning at 10:00 a.m., e.d.t. on May 22, 1959, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Southeastern New England marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposal relative to a redefinition of the marketing area raises the issue whether the provisions of the present order would tend to effectuate the declared policy of the Act, if they are applied to the marketing area as proposed to be redefined and, if not, what modifications of the provisions of the order would be appropriate. Since it is contemplated that a general hearing to consider proposed amendments to the order will be held at a later date it is expected that only those matters which are essential to effect the proposed area extension will be considered at this hearing.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture:

Proposed by Martha's Vineyard Cooperative Dairy, Inc.:

Proposal No. 1. Amend § 990.1(b) by adding Dukes County, Massachusetts, to the list of counties and towns included in the marketing area.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 2. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, 57 Eddy Street, Providence, Rhode Island, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., this 30th day of April 1959.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 59-3796; Filed, May 4, 1959; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 9]

[Docket No. 12867; FCC 59-409]

AUTHORIZATION OF NON-TYPE ACCEPTED TRANSMITTERS

Notice of Proposed Rule Making

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. It is proposed to amend paragraph (b) of § 9.187, Part 9 of the Commission's rules to include provision for the licensing, on a non-interference basis, of non-type accepted radio transmitters used by certain flight test stations, for limited periods, when good cause is shown and by Civil Air Patrol (CAP) stations.

3. In anticipation of the type acceptance requirements, Aeronautical Flight Test Radio Coordinating Council (AFTRCC) and the CAP have made studies of the impact of these requirements on their activities, and have requested the Commission to amend its rules to permit the licensing of non-type accepted transmitters as is herein proposed.

4. The request by the AFTRCC is based upon the nature of its activities as well

as the frequencies and the equipment used. Much flight testing is done in the performance of government contracts in a field of rapidly changing state of art. As a result, equipment designed for particular purposes is used in tests which must be concluded in a limited time. In many cases equipment is used in a single test after which it must be modified to meet specific design objectives. Some of the equipment used is loaned by military agencies and is of a type designed for operation on government frequencies, thus it would not be type accepted pursuant to Commission specifications.

5. The CAP's request is predicated on the use of donated or loaned equipment. Much of the equipment must be individually modified for operation on CAP frequencies, which are government frequencies made available by the Air Force. About 60 percent of the equipment, donated by U.S. Government agencies, is 10 to 20 years old and was designed to operate on Government frequencies. The balance of the equipment is provided by individuals and civil organizations. In order to perform its assigned mission, the CAP, because of budgetary limitations, must use equipment of the types previously mentioned and has indicated that its operations would be seriously impaired if type acceptance requirements were imposed on each of these individually modified equipments.

6. This proposed amendment is issued pursuant to authority contained in sections 303 (e), (f), and (r) of the Communications Act of 1934, as amended.

7. Any interested person who is of the opinion that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before May 19, 1959, written data, views, or arguments setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Rebuttal comments may be filed within 10 days from the last day for filing of original comments. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

8. In accordance with the provisions of § 1.54 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: April 29, 1959.

Released: April 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

Amend paragraph (b) of § 9.187 to read:

(b) Except for transmitters used at (1) developmental stations, (2) flight test stations, for limited periods, where justified on the basis of good cause shown, and (3) Civil Air Patrol stations, each transmitter utilized at a station authorized for operation after July 1, 1959, must be of a type which has been type accepted by the Commission for use in these services. Until January 1, 1965, types of equipment in use by a licensee prior to July 1, 1959, may continue to be used by the same licensee, his successors or assigns. These exceptions are provided on the express condition that the operation of stations using transmitting equipment not type accepted by the Commission shall not result in harmful interference due to the failure of such equipment to comply with the current technical standards of the rules.

[F.R. Doc. 59-3783; Filed, May 4, 1959; 8:49 a.m.]

[47 CFR Part 12]

[Docket No. 12485; FCC 59-412]

AMATEUR RADIO SERVICE

Further Report and Order

In the matter of amendment of § 12.111 of the Commission's rules, Amateur Radio Service, to provide that only A1 emission may be used in the lower 100 kc of the 50 and 144 Mc amateur band; Docket No. 12485.

1. A Notice of Proposed Rule Making was issued in the above-captioned proceeding on June 11, 1958, proposing establishment of sub-bands within the 50–54 Mc and 144–148 Mc amateur bands wherein only amateurs utilizing type A1 emissions[1] would be allowed to operate. It was proposed that these sub-bands should be 50.0 to 50.1 and 144.0 to 144.1 Mc. On December 3, 1958, a Report and Order was issued in this proceeding which stated in part:

> The Commission concludes that the public interest will be served by establishment, as proposed, of 100 kc segments of the 50–54 Mc and 144–148 Mc amateur frequency bands wherein operation may be conducted only if type A1 emission is used. However, the Commission is also led to conclude that the public interest would not be served by utilizing the lower 100 kilocycles of the 50–54 Mc and 144–148 Mc band, as proposed, for establishment of such segments * * *
>
> In view of all factors involved it is concluded that restriction of the frequency ranges 50.9–51.0 Mc and 147.9–148.0 Mc so as to permit operation therein only when type A1 emission is used will be in the public interest.

2. On January 9, 1959, pursuant to requests filed by the American Radio Relay League, Inc., and other interested parties, the Commission issued an Order which postponed until further notice the effective date of the amendments ordered in the above-referred-to Report and Order and extended until March 10, 1959, the time for filing petitions for reopening or reconsideration.

3. A substantial number of petitions seeking reopening of the proceeding for acceptance of additional comments have been filed as have a number of petitions which seek reconsideration by the Commission on the present record.

[1] Telegraphy without the use of modulating audio frequency.

4. The bulk of petitions seeking reconsideration on the present record allege that the action of the Commission in designating frequency segments of the 50–54 Mc and 144–148 Mc bands, other than 50.0 to 50.1 and 144.0 to 144.1 Mc, wherein only type A1 emission will be allowed, denied to interested persons "the right of presenting and having considered relevant, competent, and material evidence having essential and probative value." It is urged by these petitioners that the Commission's action in designating the frequencies 50.9 to 51.0 Mc and 147.9 to 148.0 Mc rather than the frequencies 50.0 to 50.1 Mc and 144.0 to 144.1 Mc as "C.W. Subbands" constitutes failure to comply with section 4(a) of the Administrative Procedure Act. Section 4(a) of the Administrative Procedure Act provides in pertinent part:

> Section 4(a) Notice—General Notice of Proposed Rule Making shall be published in the FEDERAL REGISTER (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include * * * (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

The Notice of Proposed Rule Making proposed: first, the establishment of 100 kilocycle sub-bands within the 50–54 Mc and 144–148 Mc amateur frequency bands wherein only type A1 emission would be allowed; and second, that such sub-bands be composed of frequencies between 50.0 to 50.1 and 144.0 to 144.1 Mc. In describing the second of those proposals the Notice of Proposed Rule Making stated in part:

> Petitioner in justification of its selection of the lower 100 kilocycles of the involved bands for exclusive use of A1 emissions states: "In the case of the 50–54 megacycle band there is technical justification for selection of the low-end for the exclusive cw segment. For example, in F2 layer work, such as is now going on widely and as the result of the current solar activity peak, and (although not quite to the same extent), sporadic-E propagation, the lower the frequency the better the chance of making distant contacts.
>
> In the case of the 144 Mc band, the location of the proposed cw segment is not subject to the same technical justification, and our selection of the low-end is purely a matter of consistency with other amateur band suballocations.

5. Even a cursory reading of the Notice of Proposed Rule Making reveals that the basic issues in this proceeding were: First, should exclusive "cw" sub-bands be established within the 50–54 Mc and 144–148 Mc bands; and second, if exclusive "cw" sub-bands should be established in the above-referred-to bands, should the placement of such sub-bands be as proposed by the Commission or at other points within the 50–54 Mc and 144–148 Mc bands? It was, therefore, incumbent upon all parties to offer whatever evidence they wished the Commission to consider relative to those issues. The failure of any party or parties to recognize the issues involved in the proceeding can hardly be said to constitute violation of section 4(a) of the Administrative Procedure Act. Furthermore, as stated by the court in Logansport Broadcast

Corporation *v.* The United States, 210 F. 2d 24:

Section 4(a) "requires only that the prior notice include 'a description of the subjects involved.' * * * Surely every time the Commission decided to take account of some additional factor it was not required to start the proceedings all over again. If such were the rule the proceedings might never be terminated."

Accordingly, those petitions which seek reconsideration upon the record presently before the Commission are denied.

6. Petitioners who seek reopening of the record for reception of additional comments allege that evidence will be adduced to show:

(a) The serious VHF amateurs who are now requesting a low-end cw assignment are the very ones who have pioneered 50 Mc and 144 Mc operation in the past. The very early work on these bands was done on A3 simply because it was satisfactory for the work being done at that time. However, in order to further advance the state of the art, it has been necessary to resort to the more efficient mode of A1. The opposition to low-end cw assignment consists largely of those newer amateurs who were not involved in the earlier pioneering work on the VHF bands. Thus, assignments of A1 sub-bands at 50.9 and 147.9 Mc deprive the serious VHF amateurs of the use of portions of the very bands which they explored and opened up for the later use of the more casual operator who has provided only numbers and occupancy.

(b) Present antenna structures in use on 144 Mc by serious VHF amateurs are largely Yagi or Yagi-array types, due to the much larger gain that may be obtained for given weight or bulk. The Yagi, however, is severely limited in bandwidth, and use of a cw sub-band at 147.9 would require virtual rebuilding of these structures to make them usable at the new frequency.

(c) A cw sub-band assignment of 50.0 rather than 50.9 Mc would allow the greater exploration of F2 openings by the more efficient mode of modulation, A1.

(d) Any attempted use of the 147.9 cw sub-band would result in exclusion of the amateur in question from operation on A3 in conjunction with the stations clustered at the low-end, by virtue of the antenna bandwidth problem * * * (Clustering of A3 stations below 144.5 Mc is evident by simple observation). This situation is contrary to the established practice of initiating a contact on A1 and then using A3 when signal strengths are found to be adequate.

(e) Those serious VHF operators who desire a low-end A1 assignment, by and large, operate both on A1 and A3. Those who oppose such an allocation largely use A3 only. The low-end A1 proponents are not "a small minority" of the amateurs who have shown sufficient versatility to utilize the modulation mode most appropriate to the prevailing band condition.

(f) Assignment of the 50.9 and 147.9 Mc sub-bands to exclusive A1 use would result in the dispossessing of the net activity presently established there. Little or no [net] activity is presently found in the lowest 100 kilocycles of 50 and 144 Mc bands.

(g) The restriction of 147.9–148 Mc to exclusive cw operation would have a "Catastrophic affect" on amateur "teletypewriter fixed frequency operation."

7. In view of the fact that evidence of the type petitioners allege will be adduced is, in some cases, not contained in the present evidentiary record, the Commission believes that the proceeding should be reopened for the receipt of additional evidence.[2]

8. *Accordingly, it is ordered,* That, any interested person may file written data, views or briefs setting forth his comments, either in support of or in opposition to the amendments proposed by the Notice of Proposed Rule Making issued in this proceeding, on or before August 3, 1959. Comments in reply to such data, views or briefs may be filed on or before August 14, 1959. The Commission will consider all properly filed comments prior to taking final action in this matter.

9. In accordance with the provisions of § 1.54 of the Commission's rules, an original and fourteen copies of all statements, briefs or comments shall be furnished the Commission.

Adopted: April 29, 1959.

Released: April 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-3784; Filed, May 4, 1959; 8:49 a.m.]

[2] In connection with the receipt of additional comments, the Commission wishes to point out that the weight accorded particular comments depends solely upon the content thereof. For example, the "ballot" type of comment is of no probative value in determining whether or not the public interest will be served by adoption of a particular rule and, thus, such comments are accorded very little weight in the deliberations of the Commission. On the other hand, comments which clearly set forth sound reasons in support of the position taken must be accorded considerable weight. Thus, the position taken by a small minority of the parties commenting on a given proposal may well prevail if such comments are sound and well reasoned even though a vast majority of the total number of comments filed advocate a different position but do not set forth sound arguments. These facts should be kept in mind by all parties when formulating comments to be filed in this or other Commission proceedings.

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial Nos. Idaho 08347, 08570, 09132, 010050]

IDAHO

Order Providing for Opening of Public Lands

APRIL 24, 1959.

The State of Idaho has certified that the hereinafter-described lands patented to the State under the provisions of section 4 of the Act of August 18, 1894 (28 Stat. 422, 43 U.S.C. sec. 641), as amended, commonly known as the Carey Act, have not been reclaimed as required by the Carey Act and that water is not available for the irrigation of these tracts. The State of Idaho therefore, has reconveyed the lands to the United States:

BOISE MERIDIAN, IDAHO

T. 2 N., R. 1 E.,
Sec. 14; SE¼NW¼.
T. 5 S., R. 11 E.,
Sec. 30; NE¼NE¼.
T. 7 S., R. 16 E.,
Sec. 20; S½NE¼, NE¼SW¼, SW¼SW¼, SE¼;
Sec. 29; W½NE¼, NW¼NW¼, SE¼NW¼, NE¼SW¼, S½SW¼, W½SE¼;
Sec. 30; Lots 1, 2, 3, 4, SW¼NE¼, SE¼NW¼, NE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 31; Lots 2, 3, 4.
T. 8 S., R. 16 E.,
Sec. 20; NW¼SW¼.
T. 7 S., R. 17 E.,
Sec. 11; NW¼SW¼;
Sec. 13; W½SE¼.
T. 8 S., R. 17 E.,
Sec. 1; NW¼SE¼.
T. 7 S., R. 18 E.,
Sec. 18; Lot 1.
T. 8 S., R. 18 E.,
Sec. 32; S½SW¼.
T. 10 S., R. 19 E.,
Sec. 25; Lot 4.
T. 5 N., R. 33 E.,
Sec. 5; Lots 1, 2, 3, 4, S½;
Sec. 6; Lots 1, 2, 3, 4, 5, 6, E½SW¼, SE¼SE¼;
Sec. 7; All;
Sec. 8; N½, N½S½, SW¼SW¼;
Sec. 17; NW¼NW¼;
Sec. 18; Lots 1, 2, 3, 4, N½NE¼, NE¼NW¼;
Sec. 19; Lot 1.
T. 1 N., R. 1 W.,
Sec. 22; S½;
Sec. 23; S½SW¼, SE¼;
Sec. 24; S½;
Sec. 25; All;
Sec. 26; All;
Sec. 27; All;
Sec. 34; W½E½, E½W½.

The area described totals 6,923.93 acres of public land.

The lands lie in Ada, Elmore, Gooding, Jerome, Jefferson and Twin Falls Counties, Idaho and are typical of dry grazing land in the Snake River plains of southern Idaho. All of the lands are susceptible to agricultural development if water is obtained for their irrigation.

Subject to any existing valid rights and the requirements of applicable law, the lands described in paragraph 2 hereof, are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws and applications and offers under the mineral leasing laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing

laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead (Alaska Home Site), Desert Land and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279–284 as amended), presented prior to 10:00 a.m. on May 30, 1959, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a.m. on August 29, 1959, will be governed by the time of filing.

(3) All valid applications and selections under the nonmineral public land laws, other than those coming under paragraphs (1) and (2) above, and applications and offers under the mineral leasing laws, presented prior to 10:00 a.m. on August 29, 1959, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands will be open to location under the United States mining laws, beginning 10:00 a.m. on August 29, 1959.

Persons claiming veteran's preference rights under Paragraph a(2) above must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, P.O. Box 2237, Boise, Idaho.

J. R. PENNY,
State Supervisor.

[F.R. Doc. 59-3764; Filed, May 4, 1959; 8:46 a.m.]

[Classification 538]

CALIFORNIA

Small Tract Opening; Public Sale Followed by Continuing Sale of Unsold Tracts

APRIL 6, 1959.

1. Pursuant to authority delegated to me by the California State Supervisor, Bureau of Land Management under Part II, Document 4, California State Office, dated November 19, 1954 (19 F.R. 7697), I hereby open the following described lands, which were classified by Classification Order 538, dated March 26, 1958 (23 F.R. 2207), to public sale under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 628a) as amended:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 36 N., R. 7 E.,
Section 31: Lots as described in paragraph 4 of this order.

Containing 126.98 acres.

2. Classification of the above described lands by this order segregates them from all appropriations, including locations under the mining laws, except applications under the mineral leasing laws.

3. The lands are located approximately eighteen miles southeast of McArthur and one mile northwest of Little Valley, and the latter is located in the northwestern portion of Lassen County, California. The topography is gently sloping with the exception of a deep ravine in the eastern portion of former Lot 2 (SW¼NW¼) and the W½W½SE¼ NW¼. This ravine has slopes in excess of 30 percent. There is a rocky clay loam throughout which supports a vegetative cover composed of a few, small ponderosa pine of non-commercial value, juniper, oak, sage brush, bitter brush and native grasses. There is no evidence of metallic or non-metallic minerals. The area is accessible in the summer by means of a county maintained dirt road running diagonally through the southwest portion of the area. There is a Government range improvement project, C2–C–131–45, a fence, which runs from the northeast portion of the area diagonally to the south center of the area. This project has been abandoned, but the cost has been prorated and will be reflected in the appraised price of the individual tracts involved. There is a small post office, grocery store and gas station at Little Valley, California. There is limited shopping facilities at the two towns of Fall River and McArthur, approximately 32 and 28 miles, respectively, from the small tract area. Good shopping facilities are at Redding, approximately 103 miles distant over paved roads and highways. There is no known domestic water system in the area, but water may be obtained from wells. Electricity is available, both at 110 and 220 volts, from P.G. & E. transmission line crossing south end of the small tract area.

4. The tracts are described by lot numbers shown on an official plat of survey of the area, filed in the Land Office, Sacramento, California, on December 16, 1958. They vary in size from 2.17 acres to 5.00 acres. All of the tracts are situated with their long axes running north and south. A plat showing the location of these tracts can be obtained by writing the Manager, Land Office, Bureau of Land Management, Room 1000, California Fruit Building, Sacramento, California. The sale of these tracts will be by lot number and the minimum appraisal of each tract is as indicated below. The tracts will be subject to all existing rights-of-way of record, and rights-of-way for roads and public utilities in accordance with 43 CFR 257.17(b), will be reserved as described below:

Lot No.	Acreage	Right-of-way width location	Appraised value
9	2.23	Existing county road	$56.50
10	2.25	33' East boundary	56.50
13	2.50	Existing county road	62.50
20	5.00	33' South boundary	125.00
22	2.50	do	62.50
24	2.50	do	62.50
26	2.50	do	62.50
28	2.50	do	62.50
30	2.50	do	62.50
32	2.50	do	62.50
34	2.50	do	62.50
36	2.50	do	62.50
38	2.50	do	62.50
40	2.50	do	62.50
42	2.50	do	[1] 78.00
44	2.50	do	[1] 78.00
46	2.50	do	[1] 78.00
48	2.50	do	[1] 78.00
50	2.50	do	62.50
51	2.50	do	62.50
52	2.50	do	62.50
53	2.50	do	62.50
54	2.50	do	62.50
55	2.50	do	62.50
56	2.50	do	62.50
57	2.50	do	62.50
58	2.50	do	62.50
59	2.50	do	62.50
60	2.50	do	62.50
61	2.50	do	62.50
62	2.50	do	62.50
63	2.50	do	62.50
64	2.50	do	62.50
65	2.50	33' South and West boundary.	[1] 62.50
66	2.50	33' South and East boundary.	[1] 78.00
67	2.50	33' South boundary	[1] 78.00
68	2.50	do	[1] 78.00
69	2.50	do	[1] 78.00
70	2.50	do	[1] 78.00
71	2.50	do	62.50
72	2.50	33' North and South boundary.	62.50
73	2.50	do	62.50
74	2.50	do	62.50
75	2.50	do	62.50
76	2.50	33' South boundary	62.50
77	2.50	do	62.50
78	2.50	do	62.50
79	2.50	do	62.50
80	2.50	do	62.50
81	2.50	do	62.50

[1] Appraisal includes the cost of abandoned Government range improvement project, C2-C131-45, a fence.

5. Persons who have previously acquired a tract under the Small Tract Act are not qualified to purchase a tract at the sale unless they can make a showing satisfactory to the Bureau of Land Management that the acquisition of another tract is warranted in the circumstances.

6. The above described tracts will be sold at public auction at a public sale at the Land Office, Bureau of Land Management, Room 1000, California Fruit Building, Fourth and J Streets, Sacramento, California at 10:00 a.m. and 11:00 a.m. on Monday, July 6, 1959. The sale at 10:00 a.m. will be open only to those persons who qualify for veterans' preference under the provisions outlined in paragraph 9 below. The 11:00 a.m. sale will be open to the public generally but will be held only if any of the tracts described in paragraph 4 of this order remain unsold after the 10:00 a.m. sale. If all tracts are not sold by 3:00 p.m. on that day, the sale will be adjourned until 11:00 a.m., on the following Monday for resumption for another one-hour period and for adjournment at 12:00 Noon to 11:00 a.m. on succeeding Mondays for additional one-hour periods until all tracts are sold or until the sale is otherwise terminated. Bids may be made personally by an individual or his agent at the sale or by mail. Bids sent by mail will be considered at a sale session only

if received at the Sacramento Land Office prior to 10:00 a.m., of the day on which that session is held. At each sale session, those tracts will be offered for which timely filed sealed bids have been received or for which nominations are made by oral bidders present at the sale, to the extent that time permits their offer. Late filed sealed bids and sealed bids not reached for consideration at one session will be held for consideration at succeeding scheduled sessions. No bid will be accepted if it is less than the appraised price of the tract. (See paragraph 4 of this order for the appraised values.)

7. To facilitate the completion of the sale, all oral bidders at the 10:00 a.m. sale on Monday, July 6, 1959, should bring with them a photostatic copy of their discharge papers or other acceptable certification of proof of right to veterans' preference as outlined in paragraph 9 of this order.

8. Each sealed bid must clearly show: (a) The full name and mailing address of the bidder; (b) Classification Order 538; (c) The legal description of the tract for which the bid is made, described in accordance with paragraph 4, above, of this order. Each bid must be accompanied by the full amount of the bid in the form of a certified or cashier's check, post office money order, or bank draft made payable to the Bureau of Land Management. All unsuccessful bids will be promptly returned after the sale. A photostatic copy of the bidder's discharge papers or other certification showing proof of veterans' preference as outlined in paragraph 9, of this order, must accompany the bid. Such papers will be returned promptly after the sale. Bids for separate tracts must be enclosed in separate envelopes but payment and proof of veterans' preference need only accompany the highest bid, providing all other bids designate the envelope containing the payment and the veterans' preference proof. Each envelope must be addressed to the Manager, Land Office, Bureau of Land Management, Room 1000, California Fruit Building, 4th and J Streets, Sacramento, California, and carry in the lower left hand corner of its face the following information and nothing else: (a) "Bid for Small Tract"; (b) "Classification Order 538"; (c) "Veterans' Preference", if bidder is entitled to such preference; (d) The description of the tract for which the bid is made, described in accordance with paragraph 4 of this order. Sender's name and return address should be shown on the reverse side of the envelope.

9. All valid applications filed prior to March 26, 1958, will be granted preference rights provided for by 43 CFR 257.5 (a). In accordance with 43 CFR 257.14 (e), each tract at the 10:00 a.m. sale will be awarded to the highest bidder among persons entitled to veterans' preference. No person will be awarded more than one tract, unless he is an agent acting for one or more persons. Persons entitled to veterans' preference, in brief are: (a) Honorably discharged veterans who served at least 90 days after September 15, 1940; (b) Surviving spouse or minor orphan children of such veterans; and (c), With the consent of the veteran, the spouse of the living veterans. Veterans who were discharged on account of wounds or disability incurred in the line of duty, or the surviving spouse, or minor children of veterans killed in the line of duty are eligible for veterans' preferenec regardless of whether such servicemen served less than 90 days after September 15, 1940.

10. All inquiries concerning these lands should be addressed to the Manager, Land Office, Bureau of Land Management, Room 1000, California Fruit Building, Fourth and J Streets, Sacramento, California.

R. G. SPORLEDER,
Officer in Charge,
Northern Field Group,
Sacramento 14, California.

[F.R. Doc. 59-3781; Filed, May 4, 1959; 8:49 a.m.]

Bureau of Mines

CERTAIN OFFICIALS

Redelegations of Authority To Enter Into Contracts Relative to Coal Fire Control

Federal Register Document 59-3125, filed April 14, 1959 (24 F.R. 2876), is hereby amended to read as follows:

The following new subparagraph is added to subparagraph 205.2.4A, Health and Safety Activity Instructions, Bureau of Mines Manual:

(3) *Coal Fire Control Contracts.* The following officials may enter into contracts for the control and extinguishment of outcrop and underground fires in coal formations as authorized by the Act of August 31, 1954 (68 Stat. 1009; 30 U.S.C. secs. 551-558):

District Health and Safety Supervisor, District H, not in excess of $100,000 of Government funds for any one contract.

Supervising Coal Mine Fire Control Engineer (Pittsburgh), not in excess of $50,000 of Government funds for any one contract.

JAMES WESTFIELD,
Assistant Director,
Health and Safety.

[F.R. Doc. 59-3765; Filed, May 4, 1959; 8:46 a.m.]

National Park Service

[Region 2, Order 3, Amdt. 6]

SUPERINTENDENTS, REGION 2

Delegation of Authority With Respect to Appointments and Status Changes

APRIL 3, 1959.

Section 1 and paragraphs (a), (b), and (c) of section 1; and section 2 and paragraphs (a), (b), and (c) of section 2, of Order No. 3, issued February 17, 1956 (21 F.R. 1494), are amended to read as follows:

SECTION 1. The National Park Service Superintendents in Region Two whose positions are allocated to Civil Service grades GS-14 and above, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority now or hereafter delegated to the Regional Director by the Director, except with respect to the following matters:

(a) Appointments and status changes involving personnel in GS-14 and higher grades; however, appointments and status changes involving grade GS-13 must be submitted to the Region Two Office for review before being finalized.

(b) Classification of positions in any Civil Service or supervisory wage board grades.

(c) Establishment of permanent graded or ungraded positions.

SEC. 2. The Superintendents whose positions are allocated to Civil Service grades GS-13, GS-12, and GS-11, inclusive, in the administration, operation, and development of the areas under their supervision, are authorized to exercise all of the authority now or hereafter delegated to the Regional Director by the Director, except with respect to the following matters:

(a) Appointments and status changes involving personnal in the same Civil Service grade as, or higher grades than, the Superintendent making appointments of status changes.

(b) Classification of positions in any Civil Service or supervisory wage board grades.

(c) Establishment of permanent graded or ungraded positions.

Paragraphs (b) and (c) of section 3 of Order No. 3, issued February 17, 1956 (21 F.R. 1494), are amended to read as follows:

(b) Classification of positions in any Civil Service or supervisory wage board grades.

(c) Establishment of permanent graded or ungraded positions.

(National Park Service Order No. 14; 39 Stat. 535; 16 U.S.C., 1952 ed., sec. 2)

HOWARD W. BAKER,
Regional Director.

[F.R. Doc. 59-3782; Filed, May 4, 1959; 8:49 a.m.]

Office of the Secretary

[Order No. 2840]

HEADS OF BUREAUS

Delegation of Authority With Respect to Land Acquisition: Reimbursement for Moving

SECTION 1. *Delegation.* The head of each bureau is authorized to exercise the authority of the Secretary under section 1 of the act of May 29, 1958 (72 Stat. 152), relating to reimbursement of owners and tenants of lands acquired for Department programs for expenses and other losses and damages incurred by them in the process, and as a direct result of such moving of themselves, their families, and their possessions, as is occasioned by such acquisition.

SEC. 2. *Redelegation.* The head of each bureau may, in writing, redelega'e

or authorize written redelegation of the authority granted in section 1 of this order.

(Sec. 2, Reorganization Plan No. 3 of 1950, 5 U.S.C., 133z–15, note)

FRED A. SEATON,
Secretary of the Interior.

APRIL 28, 1959.

[F.R. Doc. 59–3766; Filed, May 4, 1959; 8:47 a.m.]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circ. 570, Rev. Apr. 20, 1943, 1959. Supp. 208]

CINCINNATI INSURANCE CO.

Surety Company Acceptable on Federal Bonds

MAY 1, 1959.

A Certificate of Authority has been issued by the Secretary of the Treasury to the following company under the Act of Congress approved July 30, 1947, 6 U.S.C. secs. 6–13, as an acceptable surety on Federal bonds.

An underwriting limitation of $100,000.00 has been established for the company. Further details as to the extent and localities with respect to which the company is acceptable as surety on Federal bonds will appear in the next issue of Treasury Department Form 356, copies of which, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Surety Bonds Branch, Washington 25, D.C.

State in Which Incorporated, Name of Company, and Location of Principal Executive Office

Ohio; The Cincinnati Insurance Company, Cincinnati.

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F.R. Doc. 59–3777; Filed, May 4, 1959; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

RALPH F. STARZ

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the past six months.

A. Deletions: None.
B. Additions: McQuay, Inc.

This statement is made as of April 14, 1959.

RALPH F. STARZ.

APRIL 18, 1959.

[F.R. Doc. 59–3780; Filed, May 4, 1959; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 9802]

NORTHEAST AIRLINES; ENFORCEMENT PROCEEDING

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, that a hearing in the above-entitled matter is assigned to be held on June 16, 1959, at 10:00 a.m., e.d.s.t., Room 725, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Ferdinand D. Moran.

Dated at Washington, D.C., April 30, 1959.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 59–3789; Filed, May 4, 1959; 8:50 a.m.]

[Docket No. 10050]

NATIONAL AIRLINES, INC., JET FARE INVESTIGATION

Notice of Prehearing Conference

In the matter of fares to be charged by National Airlines, Inc., for jet services between New York and Miami.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on May 19, 1959, at 10:00 a.m., e.d.s.t., Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Leslie G. Donahue.

Dated at Washington, D.C., April 30, 1959.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 59–3790; Filed, May 4, 1959; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 9369, 11298; FCC 59M–559]

AMERICAN CABLE AND RADIO CORP. ET AL.

Order Scheduling Prehearing Conference

In the matter of American Cable and Radio Corporation and its subsidiaries, All America Cables and Radio, Inc., The Commercial Cable Company and Mackay Radio and Telegraph Company, v. The Western Union Telegraph Company, Docket No. 9369; and RCA Communications, Inc., v. The Western Union Telegraph Company, Docket No. 11298; lawfulness of certain practices of Western Union under the International Formula.

On the Hearing Examiner's own motion; *It is ordered,* This 29th day of April 1959, that a further prehearing conference in the above matter will be held at 10:00 a.m., May 26, 1959, in the offices of the Commission in Washington, D.C.

Released: April 29, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59–3785; Filed, May 4, 1959; 8:49 a.m.]

[Docket Nos. 10286, 10287; FCC 59–402]

ENTERPRISE CO. AND BEAUMONT BROADCASTING CORP.

Memorandum Opinion and Order Reopening Record for Further Hearing on Stated Issues

In re applications of The Enterprise Company, Beaumont, Texas, Docket No. 10286, File No. BPCT–743; Beaumont Broadcasting Corporation, Beaumont, Texas, Docket No. 10287, File No. BPCT–762; for construction permits for new television stations.

1. The Commission has under consideration (1) its Supplemental Decision in The Enterprise Company, April 16, 1958 (24 FCC 271); (2) the Opinion of the United States Court of Appeals for the District of Columbia Circuit, dated January 29, 1959 in The Enterprise Company v. FCC (C.A., D.C.; 1959) — U.S. App. D.C —, — F. 2d —, — RR —, Case #14474.

2. The Commission, in its Supplemental Decision (par. 1 (1), *supra*) found, inter alia, that KTRM, a third applicant,[1] was paid the sum of $55,000 by Beaumont, purportedly for its reimbursable expenses in prosecuting its application, and thereupon withdrew. The Court of Appeals reviewed the matter, held that there was insufficient evidence in the record from which the Commission could conclude that the payment was only for reimbursable expenses, and remanded the matter to the Commission for reconsideration in the light of its opinion.

Accordingly, it is ordered, This 29th day of April 1959, that the record herein is reopened and remanded to the examiner for further hearing and for the preparation of a supplemental Initial Decision, said further hearing to be held at the offices of the Commission in Washington, D.C. at a time and date subsequently to be specified; and

It is further ordered, That the further hearing be upon the following issues:

1. To determine the nature and composition of the $55,000 expenses claimed by KTRM at the Washington, D.C., meeting on December 13, 1954, which sum was later paid to KTRM by Beaumont with funds loaned Beaumont by W. P. Hobby, as a result of which payment

[1] KTRM, Inc. was an applicant in the original proceeding. Its application was denied by the Commission's Decision of August 6, 1954. Its petition for reconsideration and related pleadings were withdrawn by letter of December 17, 1954. Consequently, its application is no longer before the Commission.

KTRM withdrew from further participation in the proceedings herein.

2. To determine in the light of the foregoing determination whether such payment either contravened the public interest or constituted an abuse of the Commission's processes.

3. To conclude in the light of the foregoing determinations whether the Commission's grant to Beaumont Broadcasting Corporation hereinbefore made should be affirmed or otherwise disposed of; and

It is further ordered, That The Enterprise Company is and continues to be a party to this proceeding for the purposes of the herein-ordered further hearing.

Released: April 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-3786; Filed, May 4, 1959; 8:49 a.m.]

[Docket No. 12176 etc.; FCC 59-400]

KTAG ASSOCIATES (KTAG-TV) ET AL.

Memorandum Opinion and Order Amending Issues

In re applications of Charles W. Lamar, Jr., J. Warren Berwick, Harold Knox & R. B. McCall, Jr., d/b as KTAG Associates (KTAG-TV), Lake Charles, Louisiana, Docket No. 12176, File No. BMPCT-4682, for modification of construction permit; Evangeline Broadcasting Company, Inc., Lafayette, Louisiana, Docket No. 12177, File No. BPCT-2335; Acadian Television Corporation, Lafayette, Louisiana, Docket No. 12178, File No. BPCT-2351, for construction permits for new television broadcast stations; Camellia Broadcasting Company, Inc., (KLFY-TV) Lafayette, Louisiana, Docket No. 12436, File No. BMPCT-4711, for modification of construction permit.

1. The Commission has before it (1) the petition for reconsideration and deletion of footnote 1 to the Commission's Memorandum Opinion and Order, released March 4, 1959 (FCC 59-150; Mimeo No. 69431), filed March 13, 1959, by Acadian Television Corporation (Acadian); (2) the petition for partial reconsideration to delete erroneous footnote, filed March 13, 1959, by Evangeline Broadcasting Company, Inc. (Evangeline); (3) the petition for deletion of issue and opposition, filed March 26, 1959, by KTAG Associates (KTAG); (4) an opposition by the Commission's Broadcast Bureau (Bureau), filed March 26, 1959, to the petitions filed by Acadian and Evangeline; (5) Evangeline's and Acadian's replies, filed April 3 and April 6, respectively, to the pleadings filed by KTAG and the Bureau; and (6) KTAG's reply, filed April 16, 1959.

2. The Commission by its action in Docket No. 11752, allocated Channel 3 to Lake Charles-Lafayette, Louisiana. KTAG, permittee of KTAG-TV, Channel 25, Lake Charles, Louisiana, filed an application to modify its permit to specify Channel 3 in Lake Charles instead of Channel 25. Evangeline and Acadian applied for construction permits for new television stations to operate on Channel 3 in Lafayette. By Commission Orders, released September 30, 1957, and on May 14, 1958, these applications, together with the application of Camellia Broadcasting Company (permittee of Channel 10, KLFY-TV, Lafayette) for modification of its construction permit to change transmitter site and increase antenna height, were designated for hearing in a consolidated proceeding. The first of the specified issues reads as follows:

To determine whether the antenna system and site proposed by each of the applicants would constitute a hazard to air navigation.

3. On May 13, 1958, KTAG petitioned the Commission for leave to amend its application by changing its transmitter site and reducing its antenna height. The Hearing Examiner issued an Order granting the petition to amend, and the Commission, in its Memorandum Opinion and Order released March 4, 1959, as corrected March 11, 1959, denied the petitions of Acadian and Evangeline for review of the Hearing Examiner's Order. In reference to KTAG's amendment, the Commission, in paragraph 4 of its Memorandum Opinion and Order, stated that the "site thus proposed [in the amendment] met all separations requirements and was approved by the Washington Airspace Panel for the height specified (i.e., 1,049 feet)." In footnote 1 of the Memorandum Opinion and Order, it was stated that "the aeronautical hazard problem, as it relates to KTAG, would be resolved by the amendment (paragraph 3,[1] infra), grant of which by the Hearing Examiner is the subject of our review at this time." While the Commission affirmed the Hearing Examiner's Order granting the petition to amend, the ordering clause of the Memorandum Opinion and Order did not, however, expressly amend Issue 1, quoted above, to relieve KTAG of the showing required thereunder.

4. Acadian and Evangeline allege that footnote 1 of the Commission's Memorandum Opinion and Order raises a substantial doubt as to whether the air hazard issue still applies to KTAG's proposal; they request that such doubt be resolved in favor of the retention of the issue as to KTAG by deletion of the footnote in question. They contend, in reliance upon the affidavit of their aeronautical consultant, that the tower proposed at the KTAG site would have at least the same effect upon aeronautical considerations as that of the Evangeline/Acadian proposal and that since the Airspace Panel's action in regard to the respective site proposals of Evangeline/Acadian and KLFY-TV is predicated upon their interrelationship in the general area, there is no substantial aeronautical basis for not including the KTAG site in such comparison.[2] They argue further that the recommendation of the Panel in favor of the proposed KTAG site cannot be regarded as conclusive because legal and factual errors committed thereby remain subject to challenge; that the mere fact that the KTAG's site proposal is part of an application for Lake Charles, has no bearing on the aeronautical considerations involved; and that retention of the air hazard issue as to KTAG is essential in order to preserve their right to a full and fair hearing, including the comparative right of proof on KTAG's site proposal.

5. The footnote in question effectively eliminated the air hazard issue as to KTAG; it was so intended by the Commission. The instant requests of Acadian and Evangeline to delete the footnote are therefore in effect petitions for reconsideration. We are not persuaded by petitioners' arguments that such reconsideration is warranted.

6. While petitioners contend that from an aeronautical hazard standpoint there is no essential difference between KTAG's transmitter site and their transmitter site, they are at the same time advancing the contention in these proceedings that their transmitter site would not constitute a hazard to air navigation; assuming the validity of these contentions, KTAG's transmitter site likewise presents no hazard to air navigation. It is not essential that an air hazard issue be added as to KTAG to enable Acadian and Evangeline to meet their burden under the air hazard issue applicable to them. Under that issue, they will have an opportunity to show that their transmitter site does not constitute a hazard to air navigation, and this will include the opportunity to make a showing with respect to the aeronautical interrelationship between KTAG's transmitter site and their transmitter site. Moreover, if Acadian and Evangeline are correct in their contention that their transmitter site and KTAG's site are indistinguishable from an aeronautical hazard standpoint, the Commission's deletion of the air hazard issue as to KTAG may well be a factor beneficial to them.

7. In KTAG's petition and opposition, it is requested that the air hazard be deleted as to KTAG. As indicated above, footnote 1 serves to effect such deletion, but to resolve any doubts as to this matter, Issue 2[3] will be changed accordingly.

Accordingly, it is ordered, This 29th day of April 1959, that the petition for reconsideration and deletion of footnote 1 to the Commission's Memorandum Opinion and Order released March 4, 1959, filed March 13, 1959, by Acadian Television Corporation; the petition for

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[1] Paragraph 4 was the intended reference.

[2] The Panel recommended (a) approval of the KLFY-TV site proposal; (b) approval of the Evangeline/Acadian site proposal on condition that the KLFY-TV tower not be constructed; and (c) approval of the KTAG's site proposal. The latter approval is allegedly based upon the Panel treating the KTAG site as an entirely separate and distinct matter (unrelated to the other proposed towers in the same general area) "because of that station's designation as Lake Charles."

[3] In the Commission's Order, released September 30, 1957, designating these applications for hearing in a consolidated proceeding, the air hazard issue was designated as Issue 1. In the Commission's Memorandum Opinion and Order, released March 4, 1959, the air hazard issue was renumbered as Issue 2.

partial reconsideration to delete erroneous footnote, filed March 13, 1959, by Evangeline Broadcasting Company, Inc.; and the petition for deletion of issue and opposition to petitions of Acadian Television Corporation and Evangeline Broadcasting Company, Inc., filed March 26, 1959, by KTAG Associates, are denied; and that Issue No. 2 in this proceeding is deleted and the following Issue No. 2 substituted therefor:

To determine whether the antenna system and site proposed by each of the applicants, except KTAG Associates, would constitute a hazard to air navigation.

Adopted: April 29, 1959.

Released: April 30, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-3787; Filed, May 4, 1959; 8:49 a.m.]

[Docket No. 12619 etc.; FCC 59M-558]

GRAVES COUNTY BROADCASTING CO., INC., ET AL.

Order Scheduling Prehearing Conference

In re applications of Graves County Broadcasting Company, Inc., Providence, Kentucky, Docket No. 12619, File No. BP-11577; Muhlenburg Broadcasting Company (WNES), Central City, Kentucky, Docket No. 12620, File No. BP-11731; Charles W. Stratton, H. D. Bohn, Mose Bohn, Shelby McCallum & Smith Dunn, d/b as New Madrid County Broadcasting Company, Portageville, Missouri, Docket No. 12744, File No. BP-11686; The Tri-County Broadcasting Company, Inc. (WHDM), McKenzie, Tennessee, Docket No. 12745, File No. BP-11980; for construction permits.

It is ordered, This 29th day of April 1959, that a prehearing conference in the above-entitled proceeding will be held at 9:00 a.m., May 14, 1959, in the offices of the Commission, Washington, D.C.

Released: April 29, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-3788; Filed, May 4, 1959; 8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-14871 etc.]

TRANSWESTERN PIPELINE CO. ET AL.

Order Accelerating the Time for Filing Exceptions to the Examiner's Decision and Providing for Oral Argument

APRIL 28, 1959.

In the matters of Transwestern Pipeline Company, G-14371; Gulf Oil Corporation, G-14925, G-14940, G-14950, G-16139, G-16141, G-16218; Pure Oil Company, G-15040; Monsanto Chemical Company, G-15318; Pan American Petroleum Corporation, G-15389, Humble Oil Refining Company, G-15714; Sun Oil Company, G-15791; Union Oil Company of California, G-15810; Warren Petroleum Company, G-16030, G-16031; British American Oil Producing Company, G-16091, G-16093, G-16103; Curtis R. Inman, G-16106; Richardson & Bass et al., G-16137; G. H. Vaughn, Jr., et al., G-16195; Cities Service Gas Company, G-16216; Superior Oil Company, G-16261; Magnolia Petroleum Company, G-16367, G-16368, G-16432; Hunt Oil Company, G-16445.

At the close of the hearing in the above-entitled proceeding on April 2, 1959, counsel for Transwestern Pipeline Company orally moved on the record that the Commission set the time for filing exceptions to no more than seven days after the issuance of the Examiner's decision, with oral arguments to follow immediately thereafter.

The Commission finds: It is in the public interest that the twenty days for filing exceptions to the Examiner's intermediate decision, provided by § 1.31 of the rules of practice and procedure be shortened to ten days.

The Commission orders:

(A) Any exceptions to the Examiner's decision in these proceedings shall be filed within ten days after such decision is issued.

(B) Oral argument shall follow at the earliest possible date thereafter on a date to be fixed by notice of the Secretary of the Commission.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59-3759; Filed, May 4, 1959; 8:45 a.m.]

SOHIO PETROLEUM CO. ET AL.

[Docket No. G-8488 etc.]

Order Instituting Rate Investigation, Consolidating Proceedings, and Fixing Date of Hearing

APRIL 28, 1959.

In the matters of Sohio Petroleum Company, Docket Nos. G-8488, G-11512, G-11884, G-12205, G-12660, G-14375, G-14600, G-15211, G-15399, G-16111, G-16634 and G-18098; Sohio Petroleum Company (Operator), et al., G-16601 and G-17133; Sohio Petroleum Company, G-18355.

The above-captioned proceedings involving Sohio Petroleum Company (Sohio), Docket Nos. G-8488 and G-12660, have been heretofore consolidated with hearing to commence on January 19, 1959. By notice of December 31, 1958, upon motion of Sohio, the hearing in Docket Nos. G-8488 and G-12660 was continued to a date to be fixed. Sohio in its motion filed on December 19, 1958, as amended on February 10, 1959, moved to consolidate the following proceedings, all listed in the caption, with those proceedings previously consolidated, as referred to above; Docket Nos. G-11512, G-11884, G-12205, G-14375, G-15211 and G-15399.

All of the afore-mentioned proceedings involve increase rate proposals filed pursuant to the provisions of section 4 of the Natural Gas Act. Sohio states, in its motion to consolidate, that the evidence it proposes to present at the hearings in these proceedings is on a company-wide basis, and would be in support of proposed increases in all dockets, those proposed to be consolidated as well as those now consolidated.

In view of the fact that suspension orders are outstanding with respect to a large number of sales by Sohio, raising the question of the lawfulness of the rates proposed by Sohio, it is appropriate that a rate investigation be instituted herein and be broad enough to cover all of Sohio's rates and charges for sales of gas, subject to the jurisdiction of the Commission. It appears that, upon the basis of data available to the Commission, the rates, charges, and classifications for or in connection with the sales or transportation of natural gas by Sohio, subject to the jurisdiction of the Commission, and the rules and regulations, practices, and contracts relating thereto may be unjust, unreasonable, unduly discriminatory, or preferential.

Consistent with the foregoing motion to consolidate, other suspended rate increase proposals by Sohio not included in the motion, Docket Nos. G-14600, G-16111, G-16634, G-18098, G-16601 and G-17133 are consolidated herewith.

The Commission finds:

(1) Sohio Oil Company is an independent producer of natural gas and a "natural-gas company" within the meaning of the Natural Gas Act, being engaged in the sale and delivery of natural gas in interestate commerce for resale for ultimate public consumption.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that an investigation be instituted by the Commission, upon its own motion, into and concerning all rates, charges, or classifications demanded, observed, charged, or collected by Sohio Oil Company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, and any rules, regulations, practices, or contracts affecting such rates, charges, or classifications.

The Commission orders:

(A) An investigation of Sohio Petroleum Company is hereby instituted under the provisions of the Natural Gas Act, particularly sections 5 and 15 thereof, for the purpose of enabling the Commission to determine whether, with respect to any transportation or sale of natural gas, subject to the jurisdiction of the Commission, made or proposed to be made by Sohio, any of the rates, charges, or classifications demanded, observed, charged, or collected, or any rules, regulations, practices, or contracts affecting such rates, charges, or classifications are unjust, unreasonable, unduly discriminatory, or preferential.

(B) If the Commission, after a hearing has been had, shall find with respect to Sohio that any of its rates, charges,

classifications, rules, regulations, practices, or contracts, subject to the jurisdiction of the Commission, are unjust, unreasonable, unduly discriminatory, or preferential, the Commission will thereupon determine and fix by order or orders just and reasonable rates, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and in force.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Natural Gas Act, including particularly sections 4, 5, 14, 15 and 16 thereof, and the Commission's rules and regulations (18 CFR Ch. 1), the proceedings in the above-designated Docket Nos. G–8488, G–11512, G–11884, G–12205, G–12660, G–14375, G–14600, G–15399, G–15211, G–16111, G–18098, G–16601 and G–17133 and the rate investigation proceeding hereby instituted in Docket No. G–18355, are hereby consolidated for the purpose of hearing.

(D) The public hearing heretofore scheduled to commence on June 16, 1959, at 10:00 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., shall concern the matters involved and the issues presented in the consolidated proceedings designated in paragraph (c) above.

(E) When the said hearing commences on June 16, 1959, Sohio Petroleum Company shall go forward first and complete the presentation of evidence in its direct cases in these consolidated proceedings. The presiding examiner shall thereafter proceed as may be found appropriate under the Commission's rules of practice and procedure.

(F) Interested State commissions may participate as provided by sections 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59–3756; Filed, May 4, 1959; 8:45 a.m.]

[Docket No. G–18323]

J. C. TRAHAN ET AL.

Order for Hearing, Suspending Proposed Change in Rate, and Allowing Changed Rate To Become Effective

APRIL 28, 1959.

J. C. Trahan (Operator) et al. (Trahan) on March 30, 1959, tendered for filing a proposed change in his presently effective rate schedule [1] for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, dated March 25, 1959.

Purchaser: Arkansas Louisiana Gas Company.

Rate schedule designation: Supplement No. 6 to Trahan's FPC Gas Rate Schedule No. 3.

Effective date: April 30, 1959 (stated effective date is the first day after expiration of the required thirty-days' notice).

The proposed increased rate includes the Louisiana gas severance tax increment that was previously suspended in Docket No. G–17698 due to the questionable interpretation of the tax provisions of the contract. Since the proposed increased rate appears to be justified, with the exception of such questionable tax interpretation, the increased rate proposal should be suspended for one day and allowed to become effective. However, only the tax reimbursement portion of the proposed increase should be subject to refund.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the questionable interpretations of the tax reimbursement provisions of the proposed change, and that Supplement No. 6 to Trahan's FPC Gas Rate Schedule No. 3 be suspended and the use thereof deferred as hereinafter ordered.

(2) It is necessary and proper in the public interest in carrying out the provisions of the Natural Gas Act that the proposed rate be made effective as hereinafter provided and that Trahan be required to file an undertaking as hereinafter ordered and conditioned.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing will be held upon a date to be fixed by notice from the Secretary concerning the questionable interpretations of the tax reimbursement provisions of the proposed rate and charge contained in Supplement No. 6 to Trahan's FPC Gas Rate Schedule No. 3.

(B) Pending such hearing and decision thereon, the Supplement is hereby suspended and the use thereof deferred until May 1, 1959, and thereafter until such further time as it is made effective in the manner hereinafter prescribed.

(C) The rate, charge, and classification set forth in the Supplement shall be effective on May 1, 1959: *Provided, however,* That within 20 days from the date of this order, Trahan shall execute and file with the Secretary of the Commission the agreement and undertaking described in paragraph (E) below.

(D) Trahan shall refund at such times and in such amounts to the persons entitled thereto, and in such manner as may be required by final order of the Commission, the tax portion of the increased rate found by the Commission in this proceeding not justified, together with interest thereon at the rate of six percent per annum from the date of payment to Trahan until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the changed rate and charge allowed by this order to become effective, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report (original and one copy) in writing and under oath to the Commission monthly (or quarterly if Trahan so elects) for each billing period and for each purchaser the billing determinants of natural gas sales to such purchasers and the revenues resulting therefrom, as computed both under the rate in effect immediately prior to the date upon which the changed rate allowed by this order becomes effective, together with the differences in the revenues so computed.

(E) As provided in paragraph (C), within 20 days from the date of issuance of this order, Trahan shall execute and file in triplicate with the Secretary of this Commission the written agreement and undertaking to comply with the terms of paragraph (D) hereof, as follows:

Agreement and Undertaking of J. C. Trahan (Operator) et al. To Comply With the Terms and Conditions of Paragraph (D) of Federal Power Commission's Order Making Effective Proposed Rate Change

In conformity with the requirements of the order issued _____, 1959, in Docket No. G–18323, J. C. Trahan (Operator) et al. hereby agrees and undertakes to comply with the terms and conditions of paragraph (D) of said order, and for that purpose has caused this agreement and undertaking to be executed.

Date _____

Witness:

_____

Unless Trahan is advised to the contrary within 15 days after the date of filing such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(F) If Trahan shall, in conformity with the terms and conditions of paragraph (D) of this order, make the refunds as may be required by order of the Commission, the undertaking shall be discharged; otherwise it shall remain in full force and effect.

(G) Neither the Supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until the period of suspension has expired, unless otherwise ordered by the Commission.

(H) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59–3757; Filed, May 4, 1959; 8:45 a.m.]

[1] Present rate previously suspended and is in effect subject to refund in Docket No. G–17698 (Louisiana severance tax) and order in Docket No. G–16038 (Louisiana gathering tax).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 223]

OHIO

Declaration of Disaster Area

Whereas, it has been reported that during the month of January 1959, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Ohio.

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the office below indicated from persons or firms whose property situated in the following County (including any areas adjacent to said County) suffered damage or other destruction as a result of the catastrophe hereinafter referred to:

County: Jefferson (floods occurring on or about January 20–21, 1959).

Office: Small Business Administration Regional Office, Standard Building, Fourth Floor, 1370 Ontario Street, Cleveland, Ohio.

2. No special field officer will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to October 31, 1959.

Dated: April 23, 1959.

WENDELL B. BARNES,
Administrator.

[F.R. Doc. 59-3745; Filed, May 4, 1959; 8:45 a.m.]

[Delegation of Authority 30-IX-7 (Revision 2)]

BRANCH MANAGER, WICHITA, KANSAS

Delegation of Authority Relating to Financial Assistance, Procurement and Technical Assistance, and Administrative Functions

1. Pursuant to the authority delegated to the Regional Director by Delegation No. 30 (Revision 4), as amended (22 F.R. 5811, 8197, 23 F.R. 557, 1768, 8435), there is hereby delegated to the Branch Manager, Wichita, Kansas, Branch Office, Small Business Administration, the following authority:

A. *Specific—Financial assistance.* To take the following actions in accordance with the limitations of such delegations set forth in SBA-500, Financial Assistance Manual:

1. To approve the following types of loans:

(a) Direct Business Loans in an amount not exceeding $20,000;

(b) Participation Business Loans in an amount not exceeding $100,000;

(c) Disaster Loans in an amount not exceeding $50,000.

2. To decline original applications but not reconsiderations of Disaster Loans.

3. To approve or decline Limited Loan Participation Loans.

4. To enter into Disaster Participation Agreements with banks.

5. To execute loan authorizations for Washington approved loans and for loans approved under delegated authority, said execution to read as follows:

WENDELL B. BARNES,
Administrator.

By _____
Manager, Wichita Branch Office.

6. To modify or amend Washington approved authorizations for business or disaster loans by the issuance of Certificates of Modification, and to modify or amend authorizations for loans approved under delegated authority, in any manner consistent with the original authority to approve loans, provided however in addition to the restrictions set forth in SBA-500, Financial Assistance Manual, this delegation of authority to modify shall not be extended to those conditions inserted by the Regional Office.

7. To extend the disbursement period on all loan authorizations or undisbursed portions of loans.

8. To reinstate any loan authorization cancelled prior to the first disbursement within six months from the date of the original authorization providing that no adverse change has occurred since the loan application was approved.

9. To cancel wholly or in part undisbursed balances of partially disbursed loans and deferred participation agreements, where the Administration has not purchased its participation.

10. To approve, after disbursement or partial disbursement, the salary of new employees, not to exceed $10,000 per annum.

11. To approve, when requested, in advance of disbursement, conformed copies of notes and other closing documents and certify to the participating bank that such documents are in compliance with the participation authorization.

12. To do and to perform all and every act and thing requisite, necessary and proper to be done for the purpose of effecting the servicing and administration of any disaster loan including, without limiting the generality of the foregoing, all powers, terms, conditions and provisions as authorized herein for other loans. Said powers, terms, conditions and provisions shall apply to all documents, agreements or other instruments heretofore or hereafter executed in connection with any loan included in the above functions where such documents, agreements or other instruments are now, or shall be hereafter, in the name of the Reconstruction Finance Corporation or the Small Business Administration.

13. To take the following actions in the administration and collection of business or disaster loans:

(a) Approve or reject substitutions of accounts receivable and inventories.

(b) Release, or consent to the release of inventories, accounts receivable or cash collateral, real or personal property, offered as collateral on loan, including the release of all collateral when loan is paid in full.

(c) Approve the sale of real or personal property and the exchange of equipment held as collateral on loans.

(d) Defer until final maturity date payments on principal falling due prior to or within thirty days after initial disbursement and provide for the coincidence of principal and interest payments.

(e) Designate proxies to vote at stockholders' meetings on stock held as collateral, and determine how such shares are to be voted.

(f) Effect the purchase of the Administration's agreed portion of a participation loan upon the request of the participation institution, consent to the sale to another institution of the Small Business Administration portion of a participation loan, and to cancel any deferred participation agreement upon request of the institution.

14. To take the following actions in all loans except those loans classified as "problem loans" or "in liquidation":

(a) Extend to the maturity of a loan or to a date prior to the maturity, one monthly principal payment in any calendar year, and not more than a total of four such payments during the term of the loan, or one quarterly principal installment payment during the term of the loan, for loans with principal balances not exceeding $100,000.

(b) Carry loans which are delinquent or past-due not more than three months in such status for an additional period of not more than six months when the principal balances of such loans do not exceed $100,000.

(c) Extend the maturity of loans (within the statutory limitations) when the principal balances of such loans do not exceed $100,000.

(d) Approve or decline requests for changes in the repayment terms of notes for loans with principal balances not exceeding $100,000.

(e) Waive amounts due under net earnings clause.

(f) Approve requests to exceed fixed asset limitations and waive violations of this limitation.

(g) Approve payment of cash or stock dividends, payment of bonuses, increases in salaries, employment of new personnel, and waivers of violation of salary and bonus limitations, provided the Branch Manager considers the bonuses and/or salaries to be paid reasonable and that consent will not be given to any such payment if the payment will impair the borrower's cash position and if the loan is not current in all respects at the time the payment is made.

(h) Approve changes in use of loan proceeds in connection with partially disbursed loans.

(i) Waive violations of agreements to maintain working capital of a specified amount.

15. To accept and join with others in the acceptance of resignations of trustees under declarations of trust, trust indentures, deeds of trust and other trust instruments and agreements under which the Small Business Administration or its Administrator is a beneficiary and where the Small Business Administration or its Administrator now or hereafter is a holder of any note, notes, bond, bonds, instrument or instruments issued pursuant thereto and secured thereby.

16. To remove and join with others in the removal of any trustee or trustees under any declarations of trust, trust indentures, deeds of trust and other trust instruments and agreements under which the Small Business Administration or its Administrator now or hereafter is a beneficiary and where the Small Business Administration or its Administrator now or hereafter is the holder of any note, notes, bond, bonds, instrument or instruments issued pursuant thereto and secured thereby.

17. To select and designate persons or corporations as original, substitute or successor trustees under declarations of trust, trust indentures, deeds of trust or other trust instruments or agreements under which the Small Business Administration or its Administrator now or hereafter is a beneficiary and where the Small Business Administration or its Administrator now or hereafter is the holder of any note, bond or instrument issued pursuant thereto and secured thereby to accept on behalf of Small Business Administration or its Administrator beneficial interests in real or personal property.

18. To appoint, consent to or approve of the appointment and join with others in the appointment, consent or approval of appointment of substitute and successor trustee or trustees under any declarations of trust, trust indentures, deeds of trust and other trust instruments and agreements under which the Small Business Administration or its Administrator now or hereafter is a beneficiary and where the Small Business Administration or its Administrator now or hereafter is the holder of any note, notes, bond, bonds, instrument or instruments issued pursuant thereto and secured thereby.

19. To do and to perform all and every act and thing requisite, necessary and proper to be done for the purpose of effecting the granted powers, including, but without limiting the generality of the foregoing, the execution and delivery of quit claim, bargain and sale or special warranty deeds, leases, subleases, assignments, subordinations, satisfaction pieces, affidavits, and such other documents as may be appropriate or necessary to effectuate the foregoing, and ratifying and confirming all that said Branch Manager shall lawfully do or cause to be done by virtue hereof.

20. To take peaceable custody of collateral, as mortgagee in possession thereof or otherwise, whenever such action becomes necessary to protect the interests of or a loan made by Small Business Administration; to take all steps necessary for the preservation and protection of the property, pending foreclosure of the lien and sale of the collateral; and, to obligate the Administration in an amount not in excess of a total of $1,000 for any one loan, for those expenditures as may be required to accomplish these purposes.

21. To enter into written arrangements with custodians or caretakers of collateral covering their services, which shall not have the effect of making such persons employees of Small Business Administration but shall be limited to their temporary services for the specific purpose involved.

22. To enter into written arrangements with owners of premises, when it is necessary to use a building not part of the loan collateral for the storage of chattels pending foreclosure and sale, for a period of not more than 90 days, including a period of 10 days after the date of sale of the collateral to permit orderly removal of the property from the premises.

23. To post indemnity or other bonds in proceedings in cases where such undertakings are required by State law.

Procurement and technical assistance. To take the following actions in accordance with the limitations of such delegations as set forth in SBA–400. Agency Policy Manual, and SBA–600, Procurement and Technical Assistance Manual:

24. To develop with government procurement agencies required local procedures for implementing established inter-agency policy agreements, including but not limited to steps such as determining joint set-asides and representation at procurement centers.

Administrative. To take the following actions in accordance with the limitations of such delegations as set forth in SBA–100, Administrative Manual, and SBA–200, Controller's Manual:

25. To administer oaths of office.

26. To approve (a) annual and sick leave, and (b) leave without pay not to exceed 30 days, for employees under the supervision of the Branch Manager.

27. To (a) make emergency purchases not in excess of $25 in any one object class in any one instance but not more than $50 in any one month for total purchases in all object classes, (b) authorize purchases not in excess of such limitations for payment from an Imprest Fund, and (c) to contract for the repair and maintenance of equipment and furnishings in an amount not to exceed $25 in any one instance.

28. In connection with the establishment of Disaster Loan Offices, to (a) obligate Small Business Administration to reimburse General Services Administration for the rental of office space, (b) rent office equipment, and (c) procure (without dollar limitation) emergency supplies and materials.

29. To authorize or approve official travel.

30. To negotiate for motor vehicle services from the General Services Administration and to rent garage space for the storage of such vehicles.

B. *Correspondence.* To sign all non-policy making correspondence relating to the functions of the Branch Office.

II. The specific authority delegated in IA, except section 24, and IB may not be redelegated.

III. All authority delegated herein may be exercised by any Small Business Administration employee designated as Acting Branch Manager.

IV. All previous authority delegated by the Regional Director to the Branch Manager, Wichita, Kansas, is hereby rescinded without prejudice to actions taken under all such Delegations of Authority prior to the date hereof.

Dated: April 3, 1959.

C. I. MOYER,
Regional Director.

[F.R. Doc. 59-3727; Filed, May 1, 1959; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—MAY

A numerical list of the parts of the Code of Federal Regulations affected by documents published to date during May. Proposed rules, as opposed to final actions, are identified as such.